The Solicitors' Journal

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THE

SOLICITORS' JOURNAL

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CURRENT TOPICS

The High Court Bench

THE Hon. C. R. RUSSELL, Q.C., Mr. H. V. LLOYD-JONES, Q.C., Mr. A. G. N. CROSS, Q.C., and the Hon. D. B. BUCKLEY, M.B.E., are to be High Court judges. Mr. Justice WYNN PARRY has retired from the Bench on medical advice. Mr. Russell, Mr. Cross and Mr. Buckley are being assigned to the Chancery Division to fill the vacancies created by the appointment of Mr. Justice UPJOHN to the Court of Appeal, and by the retirements of Mr. Justice VAISEY and Mr. Justice WYNN PARRY. Mr. Justice SACHS, who has been a judge of the Probate, Divorce and Admiralty Division since 1954, is being transferred to the Queen's Bench Division to fill the vacancy caused by the appointment of Mr. Justice DEVLIN to the Court of Appeal. Mr. Lloyd-Jones is being assigned to the Probate, Divorce and Admiralty Division.

Awaiting Trial

A COMPREHENSIVE account of the time spent by persons awaiting trial has been prepared by the Home Office (Time Spent Awaiting Trial, H.M.S.O., 3s.). From the sample surveys made it appears that the average time between committal for trial by a magistrates' court and the first day of trial at a higher court was about five weeks. There were wide variations from the average time, however, with about one-fifth of the persons concerned waiting under two weeks and rather more than that number waiting eight or more weeks. The longest delays occurred at large assizes outside London. In every type of court the average interval was shorter for persons in prison than for those on bail, and for persons pleading guilty than for those pleading not guilty. Forty per cent. of all persons committed for trial were in prison for the whole waiting period, which averaged four and a half weeks. This is a long period, especially when it is borne in mind that in 1958 2,650 persons out of 10,600 persons committed for trial in custody were either acquitted or, if convicted, were not sent to prison or any other form of detention. Police views upon the granting of bail are important: only 2 per cent. of all persons remanded or committed were bailed after police objection, and only 3 per cent. were held in custody after the police had stated that they had no objection to bail. We hope to comment further on this important report when we have digested more of the statistical diet which it provides.

A New Law Society

ALTHOUGH experts differ about whether the meeting held at Alexandra Palace last week was to celebrate the conception,

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birth or baptism of the North Middlesex Law Society, they all agree that the new society now exists and we welcome it to the ranks of local law societies. We congratulate Mr. E. H. FAIRBAIRN, of Tottenham, on being elected as the first president, Mr. R. H. WILLIAMS, the Town Clerk of Hendon, as vice-president, Mr. FRANK WILDERS as secretary and Mr. D. J. SMALLEY as treasurer. Last year the Central Middlesex Law Society was brought into the world and subsequently extended its area to cover South Middlesex. In the meantime London, the last county stronghold of the right not to be organised, is beginning to crack; we understand that the inaugural meeting of the West London Law Society will be held next month. After so many years of patient but frustrated effort we congratulate the Council and the staff of The Law Society upon their success, together with the enthusiasts in the areas concerned. We sound only one note of warning. The officers and committees of all societies, whether new or old, should strain themselves to ensure that dull business is kept to a minimum. Among us are a few who delight in raising insubstantial points of order and moving theoretical amendments. There is no need for us to be legalistic in our trade union activities.

Learner Driver in Malaya

Is a learner driver with an expired provisional driving licence covered by an insurance policy authorising any person, with the insured's permission, to drive the vehicle "provided that the person driving . . . has been so permitted (in accordance with the licensing or other laws . . . to drive) and is not disqualified by order of a Court of Law . . ."? This was the question considered by the High Court, State of Kedah, exercising its appellate criminal jurisdiction, in *Tan Kwang Chin* v. *Public Prosecutor* (1959), 25 *Malayan Law Journal* 252. The appellant's provisional driving licence had expired some two days before the date of arrest when he was driving with the policy-holder's permission, the third party policy being then in force. The point at issue was whether the policy covered the appellant after the expiry of his licence. After considering the cases of *Mumford* v. *Hardy* [1956] 1 W.L.R. 163, and *Edwards* v. *Griffiths* [1953] 1 W.L.R. 1199, the court in effect answered our opening question in the affirmative.

T.V. Bailiff

THE French are justly famed for their ability to produce an appetising and even nutritious meal from the most unpromising materials. Television producers are building for themselves a comparable reputation in the field of documentaries. It would never have occurred to us to make a half-hour documentary on the work of a county court bailiff, but last week the B.B.C. gave us precisely that as the first in a series of four programmes entitled "Man at the Door." One facet which cannot be conveyed adequately in the course of half an hour is frustration, although it would have been possible to give us a shot of the elderly female plaintiff being told that she was unable to recover the fee she paid on the abortive warrant of execution. We are grateful to the B.B.C. for not disclosing to their millions of viewers any beyond the elementary devices employed by experienced judgment debtors. Indeed, the debtor in this programme was a very easy catch compared with some of those who occupy so much time of so many solicitors and court officials. This is the kind of programme which the B.B.C. do very well and we look forward to the rest of the series. Incidentally, we cannot say how far the success of the programme was due to the resemblance of the bailiff to Harry Lime.

Lucky Losers

IN English law, where there is a wagering contract, the loser is entitled to demand the return of his money from the stakeholder before it has been paid to the winner (*Diggle* v. *Higgs* (1877), 2 Ex. D. 422), but if he makes no demand until his stake has been paid to the winner, his right of recovery is lost (*Varney* v. *Hickman* (1847), 5 C.B. 271). The common law of the United States is similar in this respect as if the bargain has been fully performed, and if the loser or his stake-holder has paid over the amount that was wagered by the loser, the winner is entitled to keep his gains (see Corbin on Contracts, vol. 6, p. 908). In some States, however, there are statutes which permit the loser to maintain an action against the winner for the recovery of the amount of his losses, although sometimes this right of recovery is restricted by the statute which created it. Thus in Pittsburgh, Pennsylvania, a man lost £700 in a game of cards and he has recently filed a suit to recover the amount of his losses. In that State the relevant statute provides that anyone who loses money or any other thing of value in a game of hazard has the right to bring an action within ten days for its recovery, but in other States the courts themselves appear to have imposed further restrictions upon this right of recovery. For example, in *Bamman* v. *Erickson* (1942), 141 A.L.R. 938, a statute provided that: "Any person who shall pay, deliver or deposit any money, property or thing in action, upon the event of any wager or bet . . . may sue for and recover the same of the winner or person to whom the same shall be paid or delivered." The New York Court of Appeals held that this provision applied only to "casual bettors," i.e., persons who had not been guilty of betting and gambling organised and carried on as a systematic business in a way which the law makes criminal, as "the law offers means of defense to the helpless fly, however foolish,—it will not extend its aid to the designing spider" (per Lehman, Ch. J.).

Dressing for Dinner

SOME weeks ago we considered the hypothetical question whether an innkeeper was entitled to refuse refreshment to a traveller on the ground that he (the traveller) had removed his jacket (see "Refusal of Refreshment," 103 SOL. J. 739), and we said that we would be surprised if this was the case. A similar point arose recently in an action in the Circuit Civil Court in Dublin (see *Irish Independent*, 18th December, 1959). A traveller was refused a meal in two hotels because he refused to remove his overcoat. The garment was in good condition and it was conceded that the day in question was a bitterly cold day. It seems that the traveller desired to eat his meal without removing his overcoat because, having recovered from a recent illness, his doctor had advised him to wear a top coat on long journeys. Judge RYAN had no doubt that an innkeeper is obliged to supply a traveller with food and lodging and that he cannot refuse to do so without reasonable excuse. In this case, the learned judge held that insistence on wearing an overcoat was not a reasonable excuse for refusing refreshment to the traveller and he awarded him nominal damages of £5 5s. with costs, against the proprietors of each hotel.

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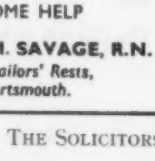

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FROM THE EXECUTOR'S VIEWPOINT

In a recent article (see 103 Sol. J. 883) we considered what pressure disgruntled beneficiaries and creditors could put on executors. It seems only fair now to look at some of the executor's burdens and what protection the law gives him. Much of what is written below will be carrying coals to Newcastle, but once in a while Newcastle may not mind. (The term "executor," incidentally, will throughout include an administrator.)

Duties of an executor

In general, an executor must, like any other trustee, exercise that care which a prudent man of business would take in looking after his own affairs (*Speight* v. *Gaunt* (1883), 9 App. Cas. 1). On the whole this is quite a high standard. If he departs from it he will be guilty of *devastavit* or of wilful default and be obliged to make good the loss. *Devastavit* is a mis-management or squandering or neglect of assets (Bac. Abr. III 510; *Re Brogden; Billing* v. *Brogden* (1888), 38 Ch. D. 546). Wilful default is not a term of art but connotes a failure through reckless carelessness to do something for the estate which could have been done with advantage. Hence, an executor may be called upon by the court at the instance of a beneficiary or creditor to account for what he *ought* to have received but did not in fact receive due to such default.

Another general feature of a trust is that it is a very personal undertaking by a trustee, with two broad consequences: first, he cannot delegate his duties to others, and, secondly, he is only liable for his *own* misdeeds. There are, however, exceptions to both propositions. For instance, s. 23 of the Trustee Act, 1925, permits him to employ a solicitor, banker, stockbroker or other person and protects him from the default of any such person "employed in good faith"; and by s. 25 he may delegate his duty by power of attorney within limits if he goes abroad for more than one month. As to loss of assets, he is only liable for the loss of those *he* has actually received—although he is not liable for loss caused by accident (*Job* v. *Job* (1877), 6 Ch. D. 562)—and for his *own* neglect or default and not that of any other trustee, banker, broker or other person (s. 30 of the Trustee Act, 1925), unless he was himself negligent about or privy to a loss caused by another (*Booth* v. *Booth* (1838), 1 Beav. 125).

Finally, while taking this general view of the office, we might note a sort of general consolation in s. 61 of the Trustee Act, 1925, which provides the court with power to relieve an executor either wholly or in part from personal liability for a breach of trust provided he has acted honestly and reasonably, and ought fairly to be excused for the breach or for omitting to obtain the directions of the court. Now for some particular problems.

Particular problems

1. *The estate is faced with a legal action*

First, an executor has power under s. 15 of the Trustee Act, 1925, to pay or allow any debt or claim on any evidence which he thinks "sufficient" or compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatsoever relating to the estate. Secondly, if he feels he cannot properly make use of this power he should consider his possible personal liability for costs of an action. This question was discussed last year (103 Sol. J. 721); put briefly, an executor is liable for costs in the first place which he can recoup from the estate if he has acted in a proper manner. If the estate is small there is the danger that there may be insufficient to pay the *plaintiff's* costs if the executor loses the action; in which case the executor will have to bear them personally (*Marshall* v. *Wilder* (1829), 9 B. & C. 655). A third point is the importance of careful pleading. If one of the executor's answers to a claim is that there are no more assets in the estate, he should specifically plead either that he has fully administered the estate (*plene administravit*) or that he has no assets beyond a certain amount (*plene administravit praeter*). Otherwise he will be impliedly admitting that he has assets and, unless excused under s. 61 of the Trustee Act, 1925, *supra*, will be personally liable for the claim as well as the costs, if he loses (*Marsden* v. *Regan* [1954] 1 All E.R. 475). Lastly, subject to provisions about fraud, disability and written acknowledgments (Limitation Act, 1939, ss. 19, 22, 23, 26 and 31) the executor may be protected by lapse of time. A claim in respect of personal estate (*ibid.*, s. 20) or on a bond or contract under seal or on a judgment (s. 2) cannot be brought after twelve years from the date the right to claim accrued; the period is six years if, as to personal estate, the executor has become a trustee (s. 19) and also in respect of a claim for interest on a legacy (s. 20) or for a death or for damages for tort or for an account (s. 2).

2. *The executor is faced with a claim for rent and breach of covenant under a lease forming part of the estate*

On a lessee's death his term of years vests in his executor as assignee by operation of law (*Tilney* v. *Norris* (1700), 1 Ld. Raym. 553). (If he dies intestate, the time of the vesting in his administrator is when the court makes the grant of administration.) Normally, of course, an assignee is liable on the covenants in a lease by privity of estate; and an executor is no exception to this rule *after he has entered into possession*. Put another way, he incurs no personal liability until he has entered into possession (*Re Bowes; Strathmore* v. *Vane, Norcliffe's Claim* (1887), 37 Ch. D. 128). Payment of rent without actual occupation is entry into possession for this purpose, unless the payment can be explained on some other ground (*Rendall* v. *Andreae* (1892), 61 L.J.Q.B. 630). The executor's personal liability for rent is limited to the amount of the annual letting value of the property or the reserved rent, whichever is the less, irrespective of whether or not he has received any profits from the property (*Re Bowes, supra*); but his liability under other covenants is unlimited (*Tilney* v. *Norris, supra*).

How can he look after himself in this state of affairs? The most obvious answer is to avoid entry into possession and to assent to the gift of the lease in the will (if there is such a gift), taking an indemnity from the legatee (*Re Culverhouse; Cook* v. *Culverhouse* [1896] 2 Ch. 251). If there is no specific legacy of the lease, the executor should assign the term as soon as he can; this will avoid personal liability, although the estate will remain liable if the testator personally covenanted to pay rent and observe the covenants. But if the executor has entered into possession and has not assented, he is entitled to set aside a sum out of the estate to indemnify himself for any rent he pays or expenditure he makes in observance of the covenants (*Re Owers; Public Trustee* v. *Death* [1941] Ch. 389). This right is distinct from the one under s. 26 of the Trustee Act, 1925, whereby

as executor (as distinct from assignee) he can protect the estate before assenting or assigning by paying all the accrued claims, and setting aside a sufficient sum to meet any future claim for an ascertained sum which the lessee covenanted to lay out on the property.

If the estate is likely to be insolvent, and therefore insufficient to indemnify the executor, the latter might consider petitioning for it to be administered in bankruptcy under s. 130 (9) of the Bankruptcy Act, 1914. The official receiver or trustee could then exercise the right under s. 54 of that Act to disclaim the lease (*Re Mellison ; ex parte Day* [1906] 2 K.B. 68) with or without the leave of the court, according to the circumstances (Bankruptcy Rules, 1952, r. 278).

3. *The estate includes a business*

Without going into too much detail, the particular point to watch here is the executor's right to be indemnified out of the business assets if he is authorised to carry on the business. (It will be remembered that in the absence of special provision in the will an executor has no power to run the business except for the purpose of disposing of it as a going concern : *Kirkman* v. *Booth* (1848), 11 Beav. 273.) Now it will be appreciated that the business creditors at the date of death are creditors of the testator's estate ; while persons who become creditors through trading with the executor are the executor's own personal creditors by contract. The executor has a right to be indemnified out of the business assets against the claims of such personal creditors, provided, of course, that he acts properly (*Ex parte Garland ; Re Ballman* (1804), 10 Ves. 110). The crucial question in each case is what this right is worth. The estate creditors have first claim on the assets ; and if there are likely to be plenty of assets left after satisfying their claims, well and good ; but if there are not, the executor can only get his right in front of the estate creditors' by getting their consent to his carrying on the business. If he can get this consent, he will be safeguarding his indemnity pretty well, but the snag is that the estate creditors, if they are ably advised, will probably refuse consent, because such consent will put the claims by subrogation of the executor's personal business creditors against the business assets in front of the claims of the estate creditors (*Dowse* v. *Gorton* [1891] A.C. 190). (The personal creditors have a right to the assets by subrogation, to the extent of the executor's right of indemnity : *Re Johnson ; Shearman* v. *Robinson* (1880), 15 Ch. D. 548.) In such a case the executor had better be extra careful when running the business to keep out of debt !

4. *Distribution is held up because a beneficiary is missing or because of settled legacies*

The executor can apply to the court for an order to distribute the estate on the footing that the beneficiary is dead (*Re Benjamin ; Neville* v. *Benjamin* [1902] 1 Ch. 723). Such an order will protect the executor but will still leave the missing beneficiary free, if he should appear on the scene, to follow the assets and claim his share from other beneficiaries. A much cheaper alternative is to get insurance cover for a single premium against possible liability to the beneficiary, and then distribute the estate as though he were dead.

Where some legacies or shares are settled, and others are immediately payable, there is an obvious difficulty about paying the latter for fear that the former will, through loss or depreciation, be less in value when they come to be paid. However, the executor need not delay ; the rule, as stated by Lindley, L.J., is this : " . . . if trustees have assets sufficient to pay all legacies, and they pay some in full and retain sufficient to pay the rest, and the assets so retained are afterwards lost or depreciated in value *without any neglect or default of the trustees*, they are not responsible to the unpaid legatees either for the loss of the assets or for having paid too much to the legatees who received their legacies in full . . . Trustees are not insurers ; and if they have and retain in their hands assets which, *fairly valued*, are sufficient to meet legacies which are not payable, but have to be held in trust, they are, in my opinion, justified in paying other legacies payable *pari passu* with them but payable at once . . . and are not personally responsible to unpaid legatees if the assets retained by them . . . prove insufficient to pay them in full. [Their] conduct ought to be regarded with reference to the facts and circumstances existing at the time when they had to act and which were known, or which ought to have been known, by them at that time " (*Re Hurst ; Addison* v. *Topp* (1892), 63 L.T. 96, at p. 99). This rule is strengthened nowadays by the power in s. 22 (3) of the Trustee Act, 1925, for trustees to obtain a valuation from qualified agents in good faith in order to give effect to a trust.

Other points

In conclusion one need hardly say that much has been left out of this article, such as the well-known power to advertise for claimants (s. 27 of the Trustee Act, 1925) to cover against claims for *devastavit* for distributing the estate before paying unknown creditors (*Chelsea Waterworks Co.* v. *Cowper* (1795), 1 Esp. 275) ; the power to have estate accounts audited once in three years (s. 22 (4)) ; the power to fix the value of, and otherwise deal with, reversionary interests when they fall in (s. 22 (1)) ; powers to insure (s. 19), to obtain an indemnity from a beneficiary who instigated, requested or consented to a breach of trust (s. 62), to pay money or securities into court (s. 63), to deposit documents with banks or similar companies (s. 21) and others besides.

B. S. Ker.

Honours and Appointments

Mr. Robert Sydney Miller, Senior Magistrate, British Guiana, has been appointed a Puisne Judge, British Guiana.

Mr. Douglas Oliver Pepper, solicitor, of Gillingham, has been appointed deputy town clerk of Loughborough, Leicestershire, in succession to Mr. E. Bradbury, who was recently appointed Town Clerk of Deal.

Mr. Edward Yates Robinson, solicitor and Deputy Coroner of Worcester for seventeen years, has been appointed Coroner of Worcester in succession to the late Mr. H. R. Johnston.

Mr. Roland E. Smith, solicitor and Deputy Clerk of Crayford Urban District Council, has been appointed Clerk to the Waltham Holy Cross Urban District Council, with effect from 1st January, 1960.

Mr. George H. Twyford, solicitor, of Liverpool, has been appointed president of the Incorporated Law Society of Liverpool.

Mr. Robert Andrew Wotherspoon, solicitor, of Matlock, and deputy clerk to the Derbyshire County Council, has been appointed Clerk to the North Riding County Council. He succeeds Sir Hubert Thornley, who is retiring in April after forty-five years' service.

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ABSOLUTE PRIVILEGE IN JUDICIAL PROCEEDINGS

It is a well-established principle of English law that any words spoken or statements written in the course of proceedings in a court of law are absolutely privileged. No action for defamation can arise, therefore, from the statements made in the course of the proceedings by the judge, legal representatives, witnesses or parties. This principle has been extended to proceedings other than those in a court of law, to proceedings before tribunals loosely termed judicial. Complications do arise when a court is confronted with the problem of determining whether the proceedings can be classed as judicial. The attitude of the courts is far from satisfactory, although many will agree that the problem is of great complexity. The purpose of this article is to compare those cases in which the courts have held that the privilege applies with those cases in which the courts have held that the privilege is of no avail. The dividing line between these cases is diffuse, but it will be shown that on a careful examination of the case law certain guiding principles do emerge. It should be borne in mind that, if the courts decide that the proceedings are not covered by the privilege, nevertheless the law of qualified privilege applies but proof of malice is then relevant.

Proceedings not covered by absolute privilege

In the leading case of *Royal Aquarium & Summer & Winter Garden Society, Ltd.* v. *Parkinson* [1892] 1 Q.B. 431, the facts were that an action was brought by the plaintiffs, the proprietors of the above-named establishment, against the defendants for slander. The statements complained of had been made at a meeting of the London County Council which was held for the purpose of considering applications for licences for music and dancing. The defendants were opposing the renewal of such a licence. The Court of Appeal had to determine whether the proceedings in question were covered by this privilege when the proceedings were not before a court of law. Lord Esher, M.R., made the following statement which has come to be regarded as the classic statement on the scope of absolute privilege: ". . . this immunity applies wherever there is an authorised inquiry which, though not before a court of justice, is before a tribunal which has similar attributes" (at p. 442).

The Master of the Rolls pointed out that the principle had never been extended to cases in which the proceedings were not conducted in a manner analogous to those in a court of justice. He cited with approval the case of *Dawkins* v. *Lord Rokeby* (1873), L.R. 8 Q.B. 255, which will be discussed later.

This statement of Lord Esher does assist, practically, a subsequent court in the determination of the nature of the proceedings before it. The all-important question is: What are the attributes of a court of justice? The Master of the Rolls could not list, for obvious reasons, all the attributes of a court of justice, but on a close reading of his judgment one is left in doubt, it is respectfully suggested, as to what the learned judge had in mind. Fry, L.J., came to a similar conclusion but was a little more specific. He said: "Consider to what extent the doctrine would extend, if this immunity were applied to every body which is bound to decide judicially in the sense of deciding fairly and impartially. It would apply to assessment committees, to the Inns of Court when considering the conduct of one of its members, to the General Medical Council when considering questions affecting the position of a medical man, and to all arbitrators" (at p. 447).

In other words, the learned judge was saying that there exist tribunals which, acting administratively, perform their functions judicially in the above sense and such tribunals are not protected.

How then did the Court of Appeal decide that the London County Council was not acting in such a way as to be considered as possessing the attributes of a court of justice? The court concerned itself with a close study of the history of the powers which the council possessed with regard to licensing. These powers had been derived from the Local Government Act, 1888, which had transferred to the council those powers of the justices derived from an earlier statute of 1752—an Act for Regulating Places of Public Entertainment. On a true construction of the Local Government Act, 1888, the court held that the Legislature intended only the administrative powers of the justices to be transferred. Therefore, the council was not acting in a manner similar to a court of justice nor did it possess the attributes of such a court. The defence of absolute privilege was of no avail.

In the case of *O'Connor* v. *Waldron* [1935] A.C. 76, the Judicial Committee of the Privy Council was confronted with a similar problem. The facts were that an inquiry was held under the Combines Investigation Act (Canada). The commission set up under the Act had powers to summon witnesses, administer oaths and punish for disobedience of its orders. However, it was held that the inquiry did not possess attributes similar to those of a court of justice nor did it act in a manner similar thereto. An administrative function only was being performed, that of an inquiry into whether an offence had been committed. In other words, the commission was acting judicially only in the performance of an administrative function. It can be seen from these two cases that before the courts will consider that a tribunal comes within the scope of the privilege something more than the mere façade of a court of law must be proved. It is far from easy to discover this factor which assists the courts in the problem of classification of tribunals.

A most instructive case is that of *Collins* v. *Henry Whiteway & Co.* [1927] 2 K.B. 378. The facts were that the plaintiff alleged that he had been libelled in a letter written on the defendants' behalf to the Divisional Controller, Ministry of Labour, in respect of the plaintiff, who had applied to the officer appointed under the Unemployment Insurance Act, 1920, for unemployment benefits. The application had been referred to the Court of Referees in accordance with the Act and the letter had been written after the decision of the court but before the insurance officer had promulgated it. The defendants contended that the letter formed part of the proceedings of a tribunal possessing the attributes of a court of justice and acting in a similar manner.

The case was decided by Horridge, J., who considered in the greatest detail the relevant sections of the Acts and regulations setting up the procedure involved in such an application. He said: "Upon the best consideration that I can give to the sections of the Unemployment Insurance Act, 1920, and the regulations thereunder, I think that the result is that by such Act and regulations the Court of Referees was created for the purpose of deciding claims made upon the insurance funds. It is not a body deciding between the parties, nor does its decision affect criminally or otherwise the status of an individual" (at p. 383).

Now it is submitted that this last sentence is of the greatest importance. Although it is made by a judge at first instance, it does seem to supply some necessary supplementation to the general principles enunciated by Lord Esher in the *Royal Aquarium* case, *supra*. Could this consideration of the status of the individual be the factor which assists the courts in the determination of the nature of these tribunals? In all the cases cited above it will be noted that the status of an individual was in no way directly involved. The *Royal Aquarium* case was concerned with an issue between parties one of whom was desirous of a licence and the other opposing it. No one could say that the status of the prospective licensee was involved except in the remotest way by his being deprived of his licence. Horridge, J., surely had in mind that, for absolute privilege to apply, the actual purpose of the tribunal must be to adjudicate on the status of an individual directly and not through the medium of, for example, a licence. This approach to the problem will be considered again later.

Proceedings covered by absolute privilege

Dawkins v. *Lord Rokeby* was discussed and approved of by Lord Esher in the *Royal Aquarium* case, *supra*. A court of inquiry was assembled to inquire into a want of deference showed by the plaintiff, a colonel in the army, to his superior officers. Lord Rokeby, a fellow officer, was called upon to give evidence at the inquiry. Evidence was given which was subsequently contended by the plaintiff to be a slander. Under the various relevant Acts it is interesting to note the actual procedure at the inquiry. Military witnesses only were compellable. The court of inquiry was to be employed at the discretion of the commanding officer to collect and to record information. The reports were to be forwarded to the commander-in-chief. Kelly, C.B., said that he could see no reason why a communication made by a military officer to assembled military officers on a military subject, all in strict conformity to the Queen's Regulations, should not be privileged in exactly the same way as in a court of justice at Westminster. He said: "A court of inquiry, though not a court of record, nor a court of law, nor coming within the ordinary definition of a court of justice, is, nevertheless, a court duly and legally constituted, and recognised in the articles of war and many Acts of Parliament" (at p. 266). In this instance the tribunal certainly possessed many attributes of a court of justice and acted in a similar manner but also the status of the individual was directly concerned. The profession of the plaintiff was perhaps at stake.

A similar situation occurred in the case of *Barratt* v. *Kearns* [1905] 1 K.B. 504. The headnote of the report reads as follows:—

> A Commission, issued by the bishop of a diocese under the Pluralities Act, 1838, and the Pluralities Acts Amendment Act, 1885, to inquire into the inadequate performance of the ecclesiastical duties of any benefice creates a judicial tribunal, and the occasion on which a witness gives evidence before the Commission is absolutely privileged, and no action is maintainable in respect of evidence so given.

The court was rather non-committal on the reasons for its decision but the court followed the cases cited above. After citing the dictum of Lord Esher, *supra*, Collins, M.R., said: "That description applies to the present case which is that of an ecclesiastical inquiry authorised by statute, before commissioners whose duty it was to hear evidence and to report on the matter referred to them" (at pp. 501 and 511).

As in the former case, this case, too, was concerned with the status of an individual. This time the livelihood of a parson was involved. This was not referred to in the judgment, but in the following case Sankey, J., it will be seen, was obviously influenced by such consideration.

In *Co-partnership Farms, Ltd.* v. *Harvey-Smith* [1918] 2 K.B. 405 the facts were that an action for slander was brought by the plaintiff against the defendant, a member of the East Elloe Local Military Tribunal. The tribunal was concerned in hearing applications for exemption from military service of certain members of the plaintiff's co-partnership. Sankey, J., said that he was obliged to consider three things: firstly, the constitution, secondly, the procedure, and lastly, the functions of the tribunal from a consideration of the relevant Acts and regulations. He examined in great detail the powers of the tribunal to compel witnesses to attend, and the administration of the oath, but there can be no doubt that the status of the individual played an important part in his decision. He said: ". . . in my view this tribunal under the Military Service Acts, 1916, does interfere to the greatest possible extent with the status of a man, and further . . . it is to be observed that, although the tribunal has no power to administer an oath, there is a penalty attaching to persons making false statements before the tribunal . . ." (at p. 412).

In all the cases considered above it can be seen that, on a close study of the relevant Acts and regulations setting up the tribunals and laying down the procedures involved, no satisfactory general principles emerge. The courts in many cases will seize on certain aspects of the procedure and say that those are attributes of a court of justice, and they will classify other aspects as being of necessity different from a court of justice but in no way affecting the general nature of the proceedings. It is because of this approach that the law on this point is unsatisfactory. From the dicta cited above it would seem that when the court has considered the relevant Acts and regulations, when it has weighed in the balance the attributes which the tribunal possesses similar to a court of justice with those aspects of procedure foreign to such courts, the court looks for guidance from a consideration of the status of an individual. This approach has not been worked out in any detail, but, nevertheless, in two cases at first instance two learned judges were considerably influenced by such considerations. In all the cases cited the concept fits into the actual decision reached by the courts. This then could be a latent factor which assists the courts in reaching their decisions. The case of *Addis* v. *Crocker* [1959] 3 W.L.R. 527, is another example of a case where a tribunal was classed as being protected by the privilege when the status of an individual was involved.

The facts were as follows. The plaintiff, an inquiry agent, claimed damages for libel purported to have been included in a document which contained the findings of the Disciplinary Committee constituted under s. 46 of the Solicitors Act, 1957. The committee had been meeting to consider allegations of professional misconduct of a solicitor. Gorman, J., considered all the leading cases on the subject and approved of the test laid down by Lord Esher in the *Royal Aquarium* case. It was held that the Committee was judicial in character and that absolute privilege attached to the publication of the findings and the order of the committee. Gorman, J., considered in detail the actual procedure involved in the meeting of the committee and the powers of the committee under the Solicitors Act, 1957, and the relevant regulations. No mention was made of the status of the individual, but it must be pointed out that, although in this case the solicitor concerned was not suing for defamation, nevertheless the proceedings

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were concerned directly with the professional status of this individual solicitor.

In all these cases the problem is more complex than it appears on first sight. Indeed, it is nothing less than the perennial problem of administrative law: the determination of the dividing line between administrative and judicial tribunals. It is not suggested that in every case where the status of the individual is concerned the proceedings will be classed as judicial in the sense of being covered by the privilege, but from the foregoing it is submitted that it is a consideration which should not be neglected.

J. M. A. B.

ENFORCEMENT OF ILLEGAL CONTRACTS

WHATEVER the origin of the extraordinary notion that "everyone is presumed to know the law," nothing is more certain, of course, than that nobody does know the law—in the sense of having a personally stored-up knowledge of the whole of the law in its manifold aspects and intricate variations. Not the most learned of judges or the most eminent of practising lawyers would lay claim to so sweeping an accomplishment, and to attribute it to a layman, as is involved in "everyone," is manifestly absurd. The truth is that the expression is completely misleading and wrong, and it has been given its quietus by no less an authority than Lord Denning in delivering a recent judgment of the Judicial Committee of the Privy Council (*Kiriri Cotton Co., Ltd.* v. *Dewani* [1960] 2 W.L.R. 127; p. 49, *post*):

> "It is not correct," said Lord Denning, "to say that everyone is presumed to know the law. The true proposition is that no man can excuse himself from doing his duty by saying that he did not know the law on the matter. *Ignorantia juris neminem excusat.*"

In other words, a man must acquaint himself with the law applicable to his particular obligations.

In the Privy Council case in question the defendant, on granting to the plaintiff a lease of a residential flat in Kampala, Uganda, had asked for and received a premium of 10,000 shillings contrary to the provisions of the Uganda Rent Restriction Ordinance, 1949, and the plaintiff, after taking possession, and while still in occupation, brought an action to recover the illegal premium (the local Ordinance, unlike the English Rent Acts, making no provision for the recovery of such premiums). The case raised a number of interesting English common-law points relating to claims for the recovery of money paid under illegal transactions, and it was that part of the argument for the defendant to the effect that the premium was paid voluntarily under a mistake of law which was common to both parties, who were both equally supposed to know the law, which elicited the above observation from Lord Denning.

The next point of interest arising from the case is that while Lord Ellenborough said nearly 150 years ago in *Langton* v. *Hughes* (1813), 1 M. & S. 593, at p. 596, that "what is done in contravention of an Act of Parliament, cannot be made the subject-matter of an action," the Judicial Committee's judgment laid it down that the dictum must be confined to a case where a party is seeking the aid of the court in order positively to enforce an illegal contract, and has no application to cases where a party is seeking, as was the plaintiff here, to recover money or property transferred under an illegal transaction. The not unfamiliar principles applicable to these latter cases may be extracted in the following summary form from well-established and long standing authorities: money paid under an illegal contract may be recovered back before, but not after, the execution of the contract (*Hastelow* v. *Jackson* (1828), 8 B. & C. 221, at p. 226); money so paid cannot be recovered back once the illegal contract has been fully executed and carried out (*Herman* v. *Jeuchner* (1885), 15 Q.B.D. 561) unless, and this goes to the root of the matter before the Judicial Committee, it is shown that the parties were not *in pari delicto*.

Recovery of money paid under mistake of law

In this connection Lord Denning also stressed that it is not correct to say that money paid under a mistake of law can never be recovered back. Money paid under a mistake of law, by itself and without more, cannot, of course, be recovered (*Rogers* v. *Ingham* (1876), 3 Ch. D. 351, at p. 355), but it may be recovered where the parties are shown not to be *in pari delicto* for one or more of various reasons—if, for example, the duty of observing the law is placed on the shoulders of the one rather than the other, it being imposed on him specially for the protection of the other (*Browning* v. *Morris* (1778), 2 Cowp. 790, at p. 792). Again the parties would likewise not be *in pari delicto* where one who ought to have known better has misled the other so that the responsibility for the mistake lies more on him than the other (*Harse* v. *Pearl Life Assurance Co.* [1904] 1 K.B. 558). In such latter cases an element of degree may well enter into the matter, but that would probably present little difficulty on the evidence in most cases. The governing principles were stated succinctly by Fry, L.J., in *Kearley* v. *Thomson* (1892), 24 Q.B.D. 742, at p. 745:

> "As a general rule, where the plaintiff cannot get at the money he seeks to recover without showing the illegal contract, he cannot succeed . . . To that general rule there are undoubtedly several exceptions. . . . One of those is the case of oppressor and oppressed, in which case usually the oppressed party may recover the money back from the oppressor. In that class of cases the *delictum* is not *par* . . . Again, there are other illegalities which arise where a statute has been intended to protect a class of persons, and the person seeking to recover is a member of that protected class. . . . In these cases of oppressor and oppressed, or of a class protected by statute, the one may recover from the other, notwithstanding that both have been parties to the illegal contract."

In applying the above principles the Judicial Committee disposed of the appeal in favour of the tenant, holding that the Uganda Ordinance is (as is the English rent restriction legislation: *Woods* v. *Wise* [1955] 2 Q.B. 29) for the protection of tenants:

> "The duty of observing the law is firmly placed by the Ordinance on the shoulders of the landlord for the protection of the tenant, and, if the law is broken, the landlord must take the primary responsibility."

The parties were thus held not to be *in pari delicto*, and the tenant was entitled to recover the premium by the common

law. The omission of a statutory remedy did not, in cases of this kind, it was pointed out, exclude the remedy by money had and received. The present case is, indeed, really an example of statutory oppression—taking money illegally from this class of persons—and thus would appear to have the additional strength of falling under both heads of Fry, L.J.'s classification—oppressed and a protected class.

C. C.

Practical Conveyancing

FLOATING CHARGES

THERE seems to be no limit to the number of doubtful points which can arise in the course of conveyancing practice. Some solicitors may consider the problems to be of fascinating interest, but more often they are annoying interruptions to everyday work. The writer's attention has been drawn to one such problem, and, on looking into it, he has reached the conclusion that, although text-books (on company law and on conveyancing) may state the relevant rule accurately, they do not draw attention to the manner in which it must be applied or point out the implications of an important distinction.

The characteristic of a floating charge is that it does not affect specific property until some event occurs which causes it to be fixed on that property. In the meantime, although the charge may affect all or a defined part of its assets, the company may carry on its business and dispose of any of its assets.

It is customary to mention a document creating a floating charge in an abstract of the title of the company to land. There seems to be some difference of opinion, however, as to how far the contents of these documents should be set out. One reason may be that the affairs of many companies are so well known that it is a matter of common knowledge that no floating charge has crystallised. Nevertheless, it seems clear on principle that the abstract should give sufficient information to enable a purchaser's solicitor to know the circumstances in which it would cease to be a floating charge.

Assuming that such a charge is disclosed by the abstract or found when a search is made, it is essential that a purchaser, mortgagee or other person acquiring title through the company should be sure that no event has occurred which has caused the charge to become fixed on the property with which he is concerned. If that should have happened, then a good title can be obtained only if the person having the benefit of the charge will concur to release the property.

Fixing of charge

The classic definition of the circumstances in which the charge becomes fixed is that propounded in *Governments Stock & Other Securities Investment Co.* v. *Manila Ry. Co.* [1897] A.C. 81, by Lord Macnaghten at p. 86, as follows: "It is of the essence of [a floating security] that it remains dormant until the undertaking charged ceases to be a going concern, or until the person in whose favour the charge is created intervenes. His right to intervene may of course be suspended by agreement."

In commenting on this passage, Fletcher Moulton, L.J., in *Evans* v. *Rival Granite Quarries, Ltd.* [1910] 2 K.B. 979, said, at p. 993: "Lord Macnaghten there lays down that that which changes the character of a floating security to that of a fixed charge is either the cessation of the carrying on of business by the company or the actual intervention of the debenture-holder, but not his mere right to intervene. Mere default on the part of the company does not change the character of the security; the debenture-holder must actually intervene."

Conveyancing inquiries

In these circumstances one would expect that the task of a solicitor acting for a purchaser or mortgagee would be to ensure merely that the business is still being carried on and that the debenture-holder has not actually intervened (e.g., by appointing a receiver). When one turns to text-books on conveyancing rather different wording is found, however. For example, in Williams, Vendor and Purchaser, 4th ed., vol. 2, at p. 934, it is stated that: "Upon the sale by a company of land subject to a floating security, of which the terms empower the company to dispose of its property in the course of its business until default shall be made in payment of the principal or interest secured, the purchaser is entitled to reasonable evidence that *no such default has been made* (*Re Horne & Hellard* (1885), 29 Ch. D. 736; see *Driver* v. *Broad* [1893] 1 Q.B. 744; *Governments Stock & Other Securities Investment Co.* v. *Manila Ry. Co.* [1895] 2 Ch. 551); and he must ascertain that no steps have been taken to enforce the security and that *nothing else has occurred to make it attach specifically* on the property charged." Similarly, the present writer has stated (Emmet on Title, 14th ed., Supplement to p. 284 of vol. 1) that a purchaser "is entitled to reasonable evidence that a floating charge has not crystallised; for instance *if that is to occur on default in payment* of principal or interest he may call for a statement of an officer of the company that there has been no default (*Re Horne & Hellard, supra*) and it would seem reasonable to require the statement to be in a statutory declaration."

The question arises, therefore, whether the charge becomes fixed immediately an event occurs which causes the principal money to become payable (for example, default of payment of interest or the levying of execution against the goods of the company) or at some later date when a receiver is appointed or the debenture-holders otherwise intervene.

The quotations we have already made indicate that a charge remains floating so long as the business is carried on and the holders have not taken any action. The clearest authority for this statement is provided by *Edward Nelson & Co.* v. *Faber & Co.* [1903] 2 K.B. 367. Although the floating charge expressly stated that the liberty of the company to carry on business should cease (and the charge should be immediately enforceable) if default was made in payment of the principal or interest or a receiver was appointed, it was decided that, even after interest was in arrear for the specified time, the security was a floating one only. Joyce, J., said: "The company can deal with the property in the ordinary course of business until the company has been wound up, or stops business, or a receiver has been appointed."

Why then should statements of conveyancing practice refer to the occurrence of an event which causes the principal to be payable? The reason seems to be that they are based

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on the decision in *Re Horne & Hellard*, which is the only reported case concerned with the rights of a purchaser of land. Nevertheless, it seems that the words used in that judgment do not accurately represent the general rule, because the facts were unusual. No question was raised as to continuance of business after default; the decision was that a purchaser was entitled to reasonable evidence that default had not occurred. It is important to consider particular terms of the debenture. In the first place the company charged "the undertaking, . . . and other real and personal property, both present and future." Pearson, J., said: "I will assume . . . that if the debentures . . . had stopped at [those] words . . . I should be bound . . . to hold that these debentures create a charge on the property of the company existing at the time when their dealing with their property is stopped by the appointment of a receiver at the instance of the debenture-holders, or by the winding up of the company." He pointed out, however, that the debenture in question went on to provide that it should "*until default in the payment of the principal or interest . . . be a floating security* . . . not hindering sales or leases of, or other dealings with, any of the property or assets of the company in the course of its business as a going concern." The learned judge said that if he was to adopt certain earlier decisions he would have to strike out a great deal of this clause and instead insert the words "until a receiver of the property of the company shall be appointed, or until there shall be a winding up of the company." This he refused to do on the ground that these particular debentures constituted floating security *until default was made and no longer*; similar words were not contained in the debentures considered in those earlier decisions.

Wording of debentures

Consequently, it appears that the question when a charge crystallises depends on the wording of the debenture. North, J., in the court of first instance (p. 557) and Rigby, L.J., in the Court of Appeal (p. 563) in the *Governments Stock* case, pointed out the distinction. They noted that the debenture in issue in *Re Horne & Hellard* by its express terms limited the time during which the security was "floating."

On the other hand most debentures do not contain such a term. They may state that the business may be carried on until default is made in payment of principal or (for instance) until default is made for three months in payment of interest. Nevertheless, this enabling power is not construed as fixing the charge. "If the period ends by the effluxion of the three months, the charge is to be as though this condition had not been contained in the debenture, it becomes a simple ordinary floating security. The debenture-holders are under no obligation to come in and obtain the appointment of a receiver and thereby put an end to the business, though they may do so if they think it to their advantage. On the other hand, if they do not think it to their advantage, they permit the floating security to go on as a floating security with the necessary consequence that the company in the course of its business may mortgage their assets notwithstanding that security, and may give a good title to the mortgagees. I do not think that we are going contrary to *Re Horne & Hellard* before Pearson, J. The charge there was totally different, and it was a vendor and purchaser's case." (Rigby, L.J, at [1895] 2 Ch. 563).

Apparently we must look out for words such as those in *Re Horne & Hellard* "to the intent that the same charge shall, *until default in the payment of the principal or interest . . .* be a floating security." In practice similar words will rarely be met. The form given in Palmer's Company Law, 20th ed., p. 372 et seq., charges the undertaking by way of floating security. It states (p. 381) when the principal moneys are payable and that a receiver can then be appointed (p. 383), but there is no express time limit on the "floating."

Conclusions

What was apparently a simple question of practice has led to a narrow distinction. The conclusions relevant to conveyancing practice would seem to be:—

1. A floating charge should be abstracted in sufficient detail to enable a purchaser's or mortgagee's solicitor to identify the circumstances in which it will become fixed.

2. A purchaser is entitled to evidence that it has not become fixed.

3. The charge should be examined to ascertain whether it expresses a limit to the time during which it "floats" (e.g., by expiration of a period, or, as in *Re Horne & Hellard*, by default in making a payment). If (as is unlikely) it does, then the evidence must show that the limit has not been reached (for instance, as in that decision, that there has been no default).

4. In the case of a debenture in more normal form it would be helpful to know that the principal has not become payable. Nevertheless, the charge may not have crystallised (and so the company can still pass a good title) even though the company has failed to make a payment. The true test to be applied on investigation of title (and in many other cases: for instance, on satisfaction of a debt), where the debenture is in the usual form (or in exceptional cases if an express limit on the "floating" has not been reached), is whether steps have been taken to enforce the security (usually by appointing a receiver) or business has ceased, or winding up has commenced (by order of the court or resolution of the company). These are the points on which evidence should be provided.

5. Whether the charge has crystallised is ultimately a question of fact. Perhaps the affairs of many companies are sufficiently known to a purchaser's solicitor for this inquiry to be unnecessary. Where, however, there is any doubt it would seem reasonable to call for a statutory declaration that no event has occurred which would (having regard to the terms of the particular debenture) cause the floating charge to settle. It should be borne in mind that (assuming an adequate abstract has been supplied) the cost of proving a fact such as one relevant for this purpose is an expense of "procuring . . . and producing . . . evidences and information" and so it appears that, by virtue of the Law of Property Act, 1925, s. 45 (4), it falls on the purchaser. As a statutory declaration (which might be made by the secretary or a director of the vendor company) would not be in the possession of the vendor company until prepared at the request of the purchaser, it can scarcely be regarded as a document in the possession of the vendor within the exception to that subsection.

J. GILCHRIST SMITH.

THE LAW SOCIETY: EXAMINATION RESULTS

In The Law Society's November Intermediate Examination (Trust Accounts and Book-keeping Portion) 240 out of the 458 candidates who sat passed. The Herbert Ruse Prize was awarded to Mr. JOHN ANTHONY WALSH, of Liverpool.

Landlord and Tenant Notebook

SERVICE OF REDIRECTED NOTICE

THE question in *Stylo Shoes, Ltd.* v. *Prices Tailors, Ltd.* [1960] 2 W.L.R. 8; p. 16, *ante*, was whether a notice to terminate under the Landlord and Tenant Act, 1954, Pt. II, sent by registered post to the tenants' former registered office, and redirected by the local postmaster to their new registered office and principal place of business, had been effectively served. It sounds a very simple question; but several points were usefully dealt with in Wynn Parry, J.'s judgment.

When the change was made, the tenants had notified the landlords of their new address and also arranged for correspondence to be redirected by the post office. The notice to terminate was sent off nearly twenty-one months later, and took a week to reach the new address, but would, apparently, have arrived in time if validly served.

The tenants' solicitors wrote a letter in which they first acknowledged the notice and stated that their clients would not be willing to give up possession on the specified date, and then said that they did not admit the validity of the notice served and that the reply was given without prejudice to any contention which their clients might thereafter raise respecting its validity.

Then, after launching an application for a new tenancy, they took out an originating summons asking for determination of the validity point. The landlords, besides defending that validity, took the point that any invalidity had been waived.

"Place of abode"

The Landlord and Tenant Act, 1954, s. 66 (4), applies, for its purposes, the Landlord and Tenant Act, 1927, s. 23; the first subsection of the latter runs:—

> "Any notice, request, . . . under this Act shall be in writing and may be served on the person on whom it is to be served either personally, or by leaving it for him at his last known place of abode in England or Wales, or by sending it through the post in a registered letter addressed to him there, or, in the case of a local or public authority or a statutory or a public utility company, to the secretary or other proper officer at the principal office of such authority or company, and in the case of a notice to a landlord, the person on whom it is to be served shall include any agent of the landlord duly authorised in that behalf."

Examining the four possibilities, Wynn Parry, J., ruled out the first because personal service cannot be effected on a company, and the fourth because the defendants were not a statutory company as defined by the Landlord and Tenant Act, 1927, s. 25, and proceeded to consider the second and third methods: leaving for him at last known place of abode, and sending through post in a registered letter addressed to him there.

The learned judge devoted three sentences to showing that the word "him" was wide enough to include a company incorporated under the Companies Act, but did not expressly deal with the question whether such a company had an "abode." It may seem strange that a *persona* which has an abode cannot be served personally; that a company can "reside" was demonstrated at about the same time by the House of Lords in *Unit Construction Co., Ltd.* v. *Bullock* (*Inspector of Taxes*) [1959] 3 W.L.R. 1022.

Ordinary post

Wynn Parry, J., then referred to *Sharpley* v. *Manby* [1942] 1 K.B. 217 (C.A.), in which a document sent by ordinary post was held to have been served for the purposes of the (then) Agricultural Holdings Act, 1923, s. 53 (replaced by s. 92 of the 1948 Act), with its—

> "may be served on the person to whom it is to be given either personally or by leaving it for him at his last known place of abode in England, or by sending it through the post in a registered letter addressed to him there."

(The new provision replaces "last known place of abode in England" by "proper address," and does not specifically say that the registered missive must be sent to that address.) Holding that the service was valid, Mackinnon, L.J., said of the section:—

> "It provides that the notice shall be served upon the person to whom it is to be given personally or by leaving it for him at his last known place of abode. It adds as an alternative that the person who has to serve the notice may do so by sending it through the post in a registered letter. If he did that, no doubt he would get the additional advantage of being able easily to prove that he had served the notice by producing the receipt given to the postman. However, he can serve the notice personally or by leaving it at the tenant's last known place of abode."

Wynn Parry, J., considered that the reasoning of that judgment was that sending by ordinary post was equivalent to leaving at last known place of abode. Another view might be that it was actually leaving the notice at the recipient's last known place of abode. Indeed, Wynn Parry, J.'s conclusion on this point was expressed as follows:—

> "The vital thing is that the letter was in fact delivered. The whole purpose of s. 23 is to see that a notice is given and actually received, and that happened in this case."

It might be observed that Mackinnon, L.J.'s "no doubt he would get the additional advantage of being able easily to prove . . . by producing the receipt given to the postman" overlooked the possibility of the presumption expressed by *omnia praesumuntur rite esse acta* being rebutted. For in *Van Grutten* v. *Trevenen* [1902] 2 K.B. 82 (C.A.), one of the facts was that the tenant of a farm had refused to sign the receipt for the registered letter (containing a notice to quit) and the postman had consequently taken it back to the post office. It was argued that the notice had not come into his hands, nor was it left on the premises. The Court of Appeal did not, according to the report, deliver a reasoned judgment when holding that the service was valid; but their decision could be supported by reference to the Interpretation Act, 1889, s. 26, with its "service shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the document."

"Shall" and "may"

Wynn Parry, J., could, however, and did, rest his decision on a wider ground than the ground that sending by post equals leaving at place of abode. The learned judge pointed out that the requirement of writing is imperative: "shall be in writing"; but that the four modes of effecting service are permissive: "may be served by"; and attached importance to the contradistinction; it appeared to him that,

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without praying in aid the method of leaving at last known place of abode, it was sufficient if the letter was sent to and received by the tenants.

Van Grutten v. *Trevenen* would, it will be observed, warrant the interpretation of "received" so as to include "tendered"; an addressee can be held to have been served with a notice and be affected by it though he has not actually seen it.

Waiver

It was not necessary, in view of the conclusion on the service point, for the learned judge to deal decisively with the plea of waiver, and Wynn Parry, J., expressly refrained from doing so, nevertheless indicating that on the facts stated the tenants must be taken to have waived any invalidity.

This touches a problem which, in view of the number of notices called for by modern legislation and their far-reaching effects, cries out for illumination. Practitioners are frequently called upon to advise whether a doubtful notice can safely be ignored; authority on the point is as yet far from adequate. In view of the importance of the matter, I propose to consider the problem in a later article.

R. B.

HERE AND THERE

RING OUT, RING IN

THE New Year has certainly started with a substantial re-arrangement of the order of battle of our judicial forces. This is particularly notable in the Chancery Division, which for nine years now has presented an unchanging front to the legal world, save for the uncompensated loss of Sir Charles Harman, translated to the Court of Appeal. Now all in a moment the scene is transformed. To replace Romer, L.J., resigned, Sir Gerald Upjohn soars suddenly over the heads of his seniors to take his seat beside Harman, L.J. Vaisey, J., and Wynn Parry, J., retire, the one having served a year beyond the recognised fifteen years, the other, owing to ill-health, a year short of it. Filling the empty places will be seen Russell, J., Cross, J., and Buckley, J. French lawyers before the great Revolution used to speak of themselves as a *noblesse de robe* and indeed heredity played a recognised part in the judicial system. We too in practice, though not in theory, have a *noblesse de robe* and this batch of judicial changes illustrates it particularly vividly.

LEGAL HEREDITY

THE Romers and the Russells have been producing judges from generation to generation. They are connected by marriage, and by marriage also were connected with the late Lord Maugham. For ninety-seven years now there have been Romers connected with the law—ever since 1863 when Robert Romer, the founder of the line, was admitted to Lincoln's Inn. He became a Lord Justice in the Court of Appeal. His son, Mark, went a step higher, crowning his judicial career by becoming a Lord of Appeal in Ordinary in 1933, and in turn passing on the judicial tradition to his own son Charles, whose resignation is a real loss to the Court of Appeal. But there is no need to regard the story as closed; there is a Romer of the fourth generation in practice at the Bar. Parallel to the history of the Romers has run that of the Russells, stemming from the formidable Victorian Irishman from Killowen on the slopes of the mountains of Mourne, who, having first practised as a solicitor in his native country, came to the English Bar in January, 1859, and soon made himself one of its most dominating personalities. He rose to be Attorney-General, was for a short time a Lord of Appeal in Ordinary and finally found his true greatness as Lord Chief Justice of England. No other office would have been big enough for his strenuous and masterful personality. His progeny were divided between the two branches of the legal profession and brought distinction to both. It was his son Frank who carried on the judicial tradition, but not in the world of juries and assize courts which had so well suited his father's combative disposition. Though not less forceful, Frank Russell was less flamboyant than his father and the Chancery Division suited him well. He closed his judicial career as a Lord of Appeal in Ordinary, reviving his father's title, which had never been made hereditary. His opinions delivered in the House of Lords were models of brevity, conciseness and relevance. In connection with some recent remarks in the editorial columns of THE SOLICITORS' JOURNAL reflecting on the unwieldy and often totally unnecessary inflation of reported judgments, it may be amusing to recall a remark Lord Russell once made in the Lords. There was at that time a very learned lord whose approach was the very antithesis of his own. He would spread himself over every conceivable aspect of the matter in hand, often digressing into obiter dicta imperfectly explored in argument. Once counsel, in the course of his submissions, cited back to him one of his less well considered pronouncements. The learned lord brushed it testily aside, saying: "It only shows the danger of citing these casual observations." "It only shows the danger of *making* these casual observations," said Lord Russell. Now a Russell of the third generation has set his foot on the ladder which leads to the Lords. After an unusually long period of waiting for his reward as Treasury Junior in the Chancery Division, Mr. Denys Buckley now provides another example of judicial heredity. His father, who became Lord Wrenbury, made the name of Buckley inseparable from company law.

COMMON-LAW CHANGES

ON the common-law side, the resignation of Lord Somervell of Harrow from the office of Lord of Appeal has caused consequential promotions. Lord Somervell was the most charming, kindly and scholarly of men. He came to the Bar without a legal background, and with rather unorthodox encouragement from a silk whom his father happened to know and consulted when his young son showed signs of choosing advocacy as a career. "What sort of a digestion have you?" asked the leader unexpectedly. The boy said it was all right. "Then you can come to the Bar," came the advice. "There's more guts than brains in this profession." The elevation of Sir Patrick Devlin to the Court of Appeal has been long expected and the only explanation of the delay must be that it was felt that it was more important to have cases properly tried at first instance than to have them put right on appeal. The new Lloyd-Jones, J., is likewise only fulfilling the settled expectation of the profession in mounting the Bench. The judicial strength of the Welsh is increasing year by year. If you add to them the Irish and the Scots, you will have the impression of a wave of Celts closing in on the English.

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Judicial Committee of the Privy Council

LANDLORD AND TENANT: ILLEGAL PREMIUM: COMMON-LAW ACTION FOR RECOVERY: PARTIES NOT *IN PARI DELICTO*

Kiriri Cotton Co., Ltd. *v.* Dewani

Lord Denning, Lord Jenkins, the Rt. Hon. L. M. D. de Silva

14th December, 1959

Appeal from the Court of Appeal of Eastern Africa.

The appellant, Kiriri Cotton Co., Ltd., in consideration of granting to the respondent, R. K. Dewani, a sub-lease of a flat in Salisbury Road, in Kampala, Uganda, "for residence only," for a term of seven years and one day at a rent of Shs. 300 a month, asked for and received from him a premium of Shs. 10,000, contrary to the provisions of s. 3 (2) of the Uganda Rent Restriction Ordinance, 1949. That Ordinance made no provision for the recovery of illegal premiums, and the respondent, having gone into occupation of the flat under the sub-lease, thereafter in this action claimed the return of the Shs. 10,000 as money received by the appellant company for the use of the respondent. The High Court of Uganda gave judgment for the respondent for that sum, and on appeal by the present appellant that judgment was affirmed by the Court of Appeal of Eastern Africa on 18th April, 1958. The appellant company appealed to the Board.

LORD DENNING, giving the judgment, said that in *R.* v. *Godinho* (1950), 17 E.A.C.A. 132, at p. 134, it was said that "Without this statutory right of recovery [under United Kingdom rent restriction legislation] the giver of the illegal premium is left in the position of one, who although he himself has committed no substantive offence, has aided and abetted the commission of an offence by another. In these circumstances . . . the principle stated by Lord Ellenborough in *Langton* v. *Hughes* (1813), 1 M. & S. 593, at p. 596, would have application: 'What is done in contravention of an Act of Parliament cannot be made the subject-matter of an action.'" That observation should be confined to cases where a party was seeking the aid of the court in order positively to enforce an illegal contract; it had no application to such a case as the present, where a party was seeking to recover money paid or property transferred under an illegal transaction. In such a case the money might be recovered back before the execution of the contract, but not afterwards (*Hastelow* v. *Jackson* (1828), 8 B. & C. 221, at p. 226). So soon as the illegal transaction had been fully executed and carried out the courts would not entertain a suit for recovery (*Herman* v. *Jeuchner* (1885), 15 Q.B.D. 561) unless it appeared that the parties were not *in pari delicto* (see *Lowry* v. *Bourdieu* (1780), 2 Dougl. 468, at p. 472). Here the illegal transaction was fully carried out, and the issue was: Was the respondent *in pari delicto* with the appellant company? The appellant contended that the money was paid under a mistake of law, but that that was a mistake common to them both, and that they were both equally supposed to know the law. Their lordships could not accept that argument. It was not correct to say that everyone was presumed to know the law. The true proposition was that no man could excuse himself from doing his duty by saying that he did not know the law on the matter. *Ignorantia juris neminem excusat.* Nor was it correct to say that money paid under a mistake of law could never be recovered back. If as between the parties the duty of observing the law was placed on the shoulders of the one rather than the other—it being imposed on him specially for the protection of the other—then they were not *in pari delicto* and the money could be recovered back (see *Browning* v. *Morris* (1778), 2 Cowp. 790, at p. 792).

Applying those principles to the present case, the duty of observing the law was firmly placed by the Ordinance on the shoulders of the landlord for the protection of the tenant, and the appellant company and the respondent were not therefore *in pari delicto* in receiving and paying respectively the illegal premium, which the respondent was therefore entitled to recover. The omission of a statutory remedy did not, in cases of this kind, exclude the remedy by money had and received. Appeal dismissed. The appellant must pay the costs.

APPEARANCES: *F. Elwyn Jones*, Q.C., *E. P. Wallis-Jones* and *C. Patel* (*Hale, Ringrose & Morrow*); *L. G. Scarman*, Q.C., and *C. F. Dehn* (*A. F. & R. W. Tweedie*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] [2 W.L.R. 127

TRADE DISPUTE: EMPLOYER'S REFUSAL TO RECOGNISE TRADE UNION: "DIFFERENCE" BETWEEN EMPLOYER AND WORKMEN

Beetham *v.* Trinidad Cement, Ltd.

Lord Denning, Lord Jenkins, the Rt. Hon. L. M. D. de Silva

16th December, 1959

Appeal from the Supreme Court of Trinidad and Tobago.

The respondent, Trinidad Cement, Ltd., which had a factory at Claxton Bay, Trinidad, dismissed two out of the number of its employees who belonged to the Federated Workers' trade union. The union sought to persuade the company to discuss the cases of the dismissed men, but the company refused to recognise the union as authorised to act on behalf of employees who had individual grievances, stating that the company had its own works committee for dealing with such cases. Shortly thereafter the union wrote to the company claiming that it then represented "a substantial majority" of the company's employees and was applying "for bargaining status" for the manual workers of the company, and it took the matter up with the Commissioner for Labour on the island, who, however, was immediately informed by the company that it had "no intention of becoming involved in any way with the union concerned." On the matter being reported to him, the Governor of Trinidad, acting under s. 8 (1) of the Trade Disputes (Arbitration and Inquiry) Ordinance of Trinidad (c. 22, No. 10), appointed a Board of Inquiry to inquire into and report on the causes and circumstances of a trade dispute which, the minute of appointment stated, existed. Section 2 (1) of the Ordinance defined "trade dispute" as meaning "any dispute or difference between employers and workmen . . . connected with the employment or non-employment . . . of any person." The company, alleging that there was no trade dispute to be inquired into, began the present proceedings claiming that the appointment of the Board of Inquiry was *ultra vires* and null and void. The Supreme Court of Trinidad and Tobago (Archer, J.) on 14th November, 1957, made an order declaring the appointment null and void, and the Governor now appealed from that decision.

LORD DENNING, giving the judgment, said that by definition a trade dispute existed wherever a "difference" existed, and a difference could exist long before the parties became locked in combat—it was sufficient that they should be sparring for an opening. Here, where in relation to their claim for bargaining status the union were asking to be allowed to negotiate and the company were persistently refusing to do so, there was clearly a difference between them,

and "it would be strangely out of date to hold . . . that a difference between a trade union acting for its members and their employers cannot be a trade dispute": per Lord Wright in *National Association of Local Government Officers* v. *Bolton Corporation* [1943] A.C. 166, at p. 189. The union, in making its claim for bargaining status, *was* acting for its members, for the claim had been brought to the attention of the union members in the company, who might fairly be assumed to have approved of it, and, in consequence, the difference was one "between employers and workmen." Their lordships were glad to find that in England a Divisional Court in a somewhat similar case—*R.* v. *Industrial Disputes Tribunal; ex parte American Express Co., Inc.* [1954] 1 W.L.R. 1118—came to similar conclusions. The provision in s. 8 (1) of the Ordinance that the Governor "may . . . inquire into the causes and circumstances of the dispute" before appointing a Board of Inquiry meant that he must inquire, as no doubt he did, in his administrative capacity, and not that he had to conduct anything in the nature of a judicial or quasi-judicial inquiry. Accordingly, at the time when the Governor appointed the Board of Inquiry, there was in existence a dispute whether the workmen should be permitted to have the union as their bargaining agent, and the appointment was not null and void. Appeal allowed. The respondent must pay the costs of the appeal.

APPEARANCES: *Sir Lionel Heald*, Q.C., and *J. G. Le Quesne* (*Charles Russell & Co.*); *R. W. Goff*, Q.C., and *Raymond Walton* (*Braby & Waller*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[2 W.L.R. 77**

Court of Appeal

ESTATE DUTY: FOREIGN IMMOVABLES: PROPER LAW REGULATING DISPOSITION

Philipson-Stow *v.* Inland Revenue Commissioners

Lord Evershed, M.R., Sellers and Harman, L.JJ.

20th November, 1959

Appeal from Upjohn, J.

By his will made in English form, a testator, having declared that, inasmuch as he had an English domicile, his will should operate as far as the case admitted according to English law, devised certain property in England, defined in the will as his "settled estates," to the use of his wife for life with remainder to the use of his eldest son for life with remainder to the use of the sons of his eldest son successively in tail male with remainders over. The testator devised and bequeathed the residue of his estate to his trustees on trust for sale to be held as if the moneys and investments representing the same were capital moneys arising from his "settled estates." The testator died on 17th May, 1908, domiciled in England. His wife died on 22nd December, 1930; and his eldest son on 23rd September, 1954. The testator's residuary estate included a farm known as "Steenbokspan," situated in the Union of South Africa, which property the trustees, in exercise of a power to postpone sale contained in the will, had retained. On the question whether the land in South Africa, which was by the law of South Africa immovable property, was, by virtue of s. 28 (2) of the Finance Act, 1949, excluded, for estate duty purposes, from the property passing on the death of the testator's son, Upjohn, J., held that the farm was not excluded, for the proper law regulating a testamentary disposition, such as this will under which the farm passed, of foreign land was dependent on the testator's intention, which in this case pointed to English law. The trustees appealed.

LORD EVERSHED, M.R., said that the devise to the executors was, admittedly, governed or controlled by South African law, but once the administration had been completed the right and the enjoyment to the income of the property passed by reason of the dispositions in the will, and the law governing or regulating those dispositions was, as intended by the testator, English law. If there was a conflict between the *lex situs* and the testator's disposition the former would prevail, but that was not so here. The South African property was not excluded from the property passing on the death of the testator's son. *In re Moses; Moses* v. *Valentine* [1908] 2 Ch. 235 and *In re Miller; Baillie* v. *Miller* [1914] 1 Ch. 511 were authorities for the proposition that the effectiveness of a purported disposition was governed by the *lex situs*, but they were not concerned with the present question where the administration had long since been completed. *In re Berchtold; Berchtold* v. *Capron* [1923] 1 Ch. 192, was concerned solely with devolution on intestacy. The observations of the court in *A.-G.* v. *Belilios* [1928] 1 K.B. 798, on *A.-G.* v. *Johnson* [1907] 2 K.B. 885, were persuasive authority at least for the view that in circumstances such as the present there was a passing which attracted duty under the statutes in force prior to 1949 and it was reasonable to construe s. 28 (2) of the Finance Act, 1949, consistently with that.

SELLERS, L.J., agreed.

HARMAN, L.J., dissenting, said the issue was at what point there was a change in the proper law regulating the disposition. *In re Berchtold, supra*, showed that the trust for sale in the will had not altered the quality of the property from an immovable to a movable asset and so long as the property remained an immovable asset it was controlled by the *lex situs*. The position would be different once the asset arrived in England. *A.-G.* v. *Johnson, supra*, was wrongly decided.

Appeal dismissed. Leave granted to appeal to the House of Lords.

APPEARANCES: *Anthony Plowman*, Q.C., and *R. Cozens-Hardy Horne* (*Norton, Rose & Co.*); *John Pennycuick*, Q.C., and *E. Blanshard Stamp* (*Solicitor of Inland Revenue*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[2 W.L.R. 32**

SHIPPING: DAMAGE TO CARGO DUE TO NEGLIGENCE OF INDEPENDENT CONTRACTOR

Riverstone Meat Co., Pty., Ltd. *v.* Lancashire Shipping Co., Ltd.

Morris, Ormerod and Willmer, L.JJ. 26th November, 1959

Appeal from McNair, J. ([1959] 1 Q.B. 74; 102 SOL. J. 656).

On 7th May, 1953, 150 cases of tinned ox tongues were shipped on board the defendants' vessel at Sydney for carriage to London under bills of lading to which the plaintiffs were parties. The bills were made subject to the Australian Sea Carriage of Goods Act, 1924. When the goods were discharged at London 113 cases were found to be damaged by sea water which had entered the hold by way of defective storm valves on the port and starboard sides of the hold. Immediately before her outward voyage to Australia, the vessel was passed through her No. 2 special survey. For this purpose the marine superintendent employed by the defendants' agents instructed a reputable firm of ship repairers to open up all the storm valves and inspection covers. After the inspection by the Lloyd's surveyor, a fitter employed by the repairers closed each inspection cover and secured it with nuts. Once the nuts had been hardened up no visual inspection could detect any unevenness in the position of the cover. The presence of the water in the hold was due to the negligence of the fitter, who failed sufficiently to secure the nuts on the inspection cover, with the result that the working of the ship in rough weather loosened the nuts. On a claim by the plaintiffs for damages for breach of contract, the trial judge held that the defendants had exercised due diligence to make the ship seaworthy and were not therefore liable under art. III, r. 1, of the 1924 Act. The plaintiffs appealed.

MORRIS, L.J., said that the plaintiffs contended that, as the defendants were under a duty to exercise due diligence, they were liable if they failed to perform their duty or if there was

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and "it would be strangely out of date to hold . . . that a difference between a trade union acting for its members and their employers cannot be a trade dispute": per Lord Wright in *National Association of Local Government Officers* v. *Bolton Corporation* [1943] A.C. 166, at p. 189. The union, in making its claim for bargaining status, *was* acting for its members, for the claim had been brought to the attention of the union members in the company, who might fairly be assumed to have approved of it, and, in consequence, the difference was one "between employers and workmen." Their lordships were glad to find that in England a Divisional Court in a somewhat similar case—*R.* v. *Industrial Disputes Tribunal; ex parte American Express Co., Inc.* [1954] 1 W.L.R. 1118—came to similar conclusions. The provision in s. 8 (1) of the Ordinance that the Governor "may . . . inquire into the causes and circumstances of the dispute" before appointing a Board of Inquiry meant that he must inquire, as no doubt he did, in his administrative capacity, and not that he had to conduct anything in the nature of a judicial or quasi-judicial inquiry. Accordingly, at the time when the Governor appointed the Board of Inquiry, there was in existence a dispute whether the workmen should be permitted to have the union as their bargaining agent, and the appointment was not null and void. Appeal allowed. The respondent must pay the costs of the appeal.

APPEARANCES: *Sir Lionel Heald*, Q.C., and *J. G. Le Quesne* (*Charles Russell & Co.*); *R. W. Goff*, Q.C., and *Raymond Walton* (*Braby & Waller*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] [2 W.L.R. 77

Court of Appeal

ESTATE DUTY: FOREIGN IMMOVABLES: PROPER LAW REGULATING DISPOSITION

Philipson-Stow *v.* Inland Revenue Commissioners

Lord Evershed, M.R., Sellers and Harman, L.JJ.

20th November, 1959

Appeal from Upjohn, J.

By his will made in English form, a testator, having declared that, inasmuch as he had an English domicile, his will should operate as far as the case admitted according to English law, devised certain property in England, defined in the will as his "settled estates," to the use of his wife for life with remainder to the use of his eldest son for life with remainder to the use of the sons of his eldest son successively in tail male with remainders over. The testator devised and bequeathed the residue of his estate to his trustees on trust for sale to be held as if the moneys and investments representing the same were capital moneys arising from his "settled estates." The testator died on 17th May, 1908, domiciled in England. His wife died on 22nd December, 1930; and his eldest son on 23rd September, 1954. The testator's residuary estate included a farm known as "Steenbokspan," situated in the Union of South Africa, which property the trustees, in exercise of a power to postpone sale contained in the will, had retained. On the question whether the land in South Africa, which was by the law of South Africa immovable property, was, by virtue of s. 28 (2) of the Finance Act, 1949, excluded, for estate duty purposes, from the property passing on the death of the testator's son, Upjohn, J., held that the farm was not excluded, for the proper law regulating a testamentary disposition, such as this will under which the farm passed, of foreign land was dependent on the testator's intention, which in this case pointed to English law. The trustees appealed.

LORD EVERSHED, M.R., said that the devise to the executors was, admittedly, governed or controlled by South African law, but once the administration had been completed the right and the enjoyment to the income of the property passed by reason of the dispositions in the will, and the law governing or regulating those dispositions was, as intended by the testator, English law. If there was a conflict between the *lex situs* and the testator's disposition the former would prevail, but that was not so here. The South African property was not excluded from the property passing on the death of the testator's son. *In re Moses; Moses* v. *Valentine* [1908] 2 Ch. 235 and *In re Miller; Baillie* v. *Miller* [1914] 1 Ch. 511 were authorities for the proposition that the effectiveness of a purported disposition was governed by the *lex situs*, but they were not concerned with the present question where the administration had long since been completed. *In re Berchtold; Berchtold* v. *Capron* [1923] 1 Ch. 192, was concerned solely with devolution on intestacy. The observations of the court in *A.-G.* v. *Belilios* [1928] 1 K.B. 798, on *A.-G.* v. *Johnson* [1907] 2 K.B. 885, were persuasive authority at least for the view that in circumstances such as the present there was a passing which attracted duty under the statutes in force prior to 1949 and it was reasonable to construe s. 28 (2) of the Finance Act, 1949, consistently with that.

SELLERS, L.J., agreed.

HARMAN, L.J., dissenting, said the issue was at what point there was a change in the proper law regulating the disposition. *In re Berchtold*, *supra*, showed that the trust for sale in the will had not altered the quality of the property from an immovable to a movable asset and so long as the property remained an immovable asset it was controlled by the *lex situs*. The position would be different once the asset arrived in England. *A.-G.* v. *Johnson*, *supra*, was wrongly decided.

Appeal dismissed. Leave granted to appeal to the House of Lords.

APPEARANCES: *Anthony Plowman*, Q.C., and *R. Cozens-Hardy Horne* (*Norton, Rose & Co.*); *John Pennycuick*, Q.C., and *E. Blanshard Stamp* (*Solicitor of Inland Revenue*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [2 W.L.R. 8

SHIPPING: DAMAGE TO CARGO DUE TO NEGLIGENCE OF INDEPENDENT CONTRACTOR

Riverstone Meat Co., Pty., Ltd. *v.* Lancashire Shipping Co., Ltd.

Morris, Ormerod and Willmer, L.JJ. 26th November, 1959

Appeal from McNair, J. ([1959] 1 Q.B. 74; 102 SOL. J. 656).

On 7th May, 1953, 150 cases of tinned ox tongues were shipped on board the defendants' vessel at Sydney for carriage to London under bills of lading to which the plaintiffs were parties. The bills were made subject to the Australian Sea Carriage of Goods Act, 1924. When the goods were discharged at London 113 cases were found to be damaged by sea water which had entered the hold by way of defective storm valves on the port and starboard sides of the hold. Immediately before her outward voyage to Australia, the vessel was passed through her No. 2 special survey. For this purpose the marine superintendent employed by the defendants' agents instructed a reputable firm of ship repairers to open up all the storm valves and inspection covers. After the inspection by the Lloyd's surveyor, a fitter employed by the repairers closed each inspection cover and secured it with nuts. Once the nuts had been hardened up no visual inspection could detect any unevenness in the position of the cover. The presence of the water in the hold was due to the negligence of the fitter, who failed sufficiently to secure the nuts on the inspection cover, with the result that the working of the ship in rough weather loosened the nuts. On a claim by the plaintiffs for damages for breach of contract, the trial judge held that the defendants had exercised due diligence to make the ship seaworthy and were not therefore liable under art. III, r. 1, of the 1924 Act. The plaintiffs appealed.

MORRIS, L.J., said that the plaintiffs contended that, as the defendants were under a duty to exercise due diligence, they were liable if they failed to perform their duty or if there was

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(*continued on p. xiv*)

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a failure on the part of anyone to whom the performance of the duty was delegated. That submission might in general be sound, but in the case of something so complex as a modern ocean-going ship, it was only reasonable to recognise that there must be a variety of matters which called for skilled or expert or specialised attention. There might be repairs or overhauls or inspections which demanded knowledge, experience and skill and which normally and reasonably were entrusted to those possessing the qualifications to undertake the work which had to be done. In the present case, which depended on its own facts, it was eminently reasonable for the defendants to entrust a ship repairing concern of the highest repute with the surveys and with the task of taking off the inspection covers and of replacing them after the conclusion of the inspection by the Lloyd's surveyor. On the facts in doing what they did the defendants did exercise due diligence to make their ship seaworthy. There was no delegation by them of their duty. There was a performance by them of that duty. They did exercise due diligence by taking steps which included employing reputable ship repairers. The particular task in regard to the inspection covers was well within the competence of a fitter: no supervision of a fitter was either in prudence or according to practice called for.

ORMEROD and WILLMER, L.JJ., delivered concurring judgments. Appeal dismissed.

APPEARANCES: *Ashton Roskill*, Q.C., and *J. F. Willmer* (*Clyde & Co.*); *A. A. Mocatta*, Q.C., and *Michael Kerr* (*Botterell & Roche*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [2 W.L.R. 86

LANDLORD AND TENANT: EXPIRY OF PLANNING AUTHORITY: WHETHER DEMOLITION "AT OR SHORTLY AFTER" TERMINATION OF TENANCY

Keats *v.* Graham

Lord Evershed, M.R., Sellers and Harman, L.JJ.

27th November, 1959

Appeal from Shoreditch County Court.

A lease in 1952 of premises at Hackney comprising a building with an extension at the back contained a covenant by the defendant tenant to leave the premises in substantial repair at the termination of the tenancy. The rear extension had been erected on the basis of permission granted by the London County Council under the Town and Country Planning Act, 1947, which had limited the period for which the building could be retained to seven years, and the use to "storage purposes only" (though, in 1953, this was amended to "stove enamelling" after an application had been made by the tenants). The tenants were informed in 1953 that it was unlikely that the period for which permission had been granted would be extended, and an application on behalf of the landlord was, in fact, turned down. When the authorised period expired the council did not take any steps to enforce the condition, but an appeal to the Minister against their refusal to grant any extension was unsuccessful. In December, 1956, the council wrote asking for written assurance that the extension would be removed within fourteen days. The letter was sent to the tenants, and soon afterwards they notified the landlord that they would shortly be leaving. They left the premises on 27th March, 1957. In defence to a claim by the landlord for damages for breach of the repairing covenant the tenants said that at the time the tenancy ended the extension was to have been pulled down. This defence was tried as a preliminary issue. The county court judge admitted as evidence that after the termination of the tenancy the landlord had re-let the premises with the extension for a different industrial use and that, subsequently, he had been successful in obtaining permission to use the building for light industrial purposes or for storage until 1962. The county court judge decided the preliminary issue in favour of the plaintiff and the first defendant appealed.

LORD EVERSHED, M.R., said that *Salisbury* v. *Gilmore* [1942] 2 K.B. 38, showed that in determining for the purposes of s. 18 (1) of the Landlord and Tenant Act, 1927, whether the premises were "at or shortly after the termination of the tenancy" to have been pulled down, one had to consider the probabilities as they appeared at that date, and, strictly speaking, evidence as to events occurring after that date was inadmissible, except to clarify and explain what had gone before. There was no such ambiguity in the present case and on the relevant date the inevitable inference was that the premises were going to be pulled down, since although no enforcement action had been taken the London County Council had made it plain that any industrial use was prohibited after 1st April, 1956, and had plainly required that the extension should be removed.

SELLERS and HARMAN, L.JJ., delivered concurring judgments. Appeal allowed.

APPEARANCES: *Aron Owen* (*Saunders, Sobell, Greenbury & Leigh*); *P. A. W. Merriton* (*Stanley de Leon, Lewison & Co.*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [1 W.L.R. 30

PRACTICE: VEXATIOUS PROCEEDINGS: MATTERS FOR CONSIDERATION IN MAKING ORDER

***In re* Vernazza**

Ormerod, Willmer and Harman, L.JJ.

2nd December, 1959

Appeal from Lord Parker, C.J. ([1959] 1 W.L.R. 622; 103 SOL. J. 393).

In 1935 *V* issued a writ against a company claiming damages of £158,982 for alleged breach of contract and/or wrongful dismissal. In 1937 the action was withdrawn, following a consent judgment, and a sum in court was paid out to *V*. He denied that he had consented to that course, and during the succeeding twenty-five years, with long gaps of inactivity, he sought, by appeal to the Court of Appeal and petition for leave to appeal to the House of Lords, by writs in the Chancery Division and various consequential interlocutory proceedings, by originating summons and consequential summons in the Companies Court, to pursue his claim against the company and later against its liquidator, proceeding on two subsequent occasions to the stage of petition to the House of Lords. By the year 1959 all those proceedings had been disposed of by the courts; but a new action, begun in 1957, claiming the same sum of £158,982, was continuing against the estate of *P*, who had guaranteed the debts of the company when it went into voluntary liquidation. On 9th April, 1959, the High Court made an order, on the application of the Attorney-General under s. 51 (1) of the Supreme Court of Judicature (Consolidation) Act, 1925, that no legal proceedings should without the leave of the High Court or a judge thereof be instituted by *V*, on the ground that he had habitually and persistently and without any reasonable ground instituted vexatious legal proceedings. *V* appealed against that order. On 14th May, 1959, the Supreme Court of Judicature (Amendment) Act, 1959, came into force, extending by s. 1 (1) the power of the High Court to make orders covering continuing proceedings instituted by a vexatious litigant in any court before the making of an order under s. 51 (1). On the hearing of *V*'s appeal, the Attorney-General, by a cross-notice, asked the Court of Appeal to vary the order of the High Court of 9th April, by adding thereto an order that any legal proceedings instituted by *V* in any court before the making of that order should not be continued by him without leave.

ORMEROD, L.J., dismissing the litigant's appeal, said that though he would not construe the words "instituted . . . legal proceedings" in s. 51 (1) of the 1925 Act so widely as to

cover the taking of any step in an action, they admitted of a wider construction than merely the commencement of an action by a writ; and he leaned to the view that an appeal to the Court of Appeal was the institution of a separate proceeding. But in this case it was beyond question that there was ample material before the Divisional Court to justify their exercising their discretion as they had done and making the order under s. 51 (1). On the Attorney-General's cross-notice, his contention had been that the Court of Appeal had power under s. 27 (1) of the 1925 Act to vary the order of the Divisional Court to bring it into accord with the new 1959 Act and prohibit the litigant from continuing any proceedings which he had instituted without the leave of the court. Against that it had been submitted that such might be the position with regard to matters of procedure but was not so when the effect of the order would be to take away a right already vested in a litigant, namely, the right of the subject to come to the court and have his complaint heard. In his lordship's view and on the authorities cited it appeared that this was a case where there was a substantive right vested in the litigant and the Court of Appeal accordingly should not interfere to vary an order such as this, made in accordance with the law as it was when it was made. The cross-notice also should be dismissed.

WILLMER and HARMAN, L.JJ., delivered concurring judgments.

APPEARANCES: *Arthur Bagnall* (*Official Solicitor*); *Sir Reginald E. Manningham-Buller*, Q.C., A.-G., and *J. R. Cumming-Bruce* (*Treasury Solicitor*).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[2 W.L.R. 135**

Chancery Division

AGRICULTURAL HOLDING: VALIDITY OF NOTICE TO QUIT

French *v.* Elliott

Paull, J. 13th November, 1959

Action.

The landlords of an agricultural holding served the tenant with two notices under s. 24 (2) (*d*) of the Agricultural Holdings Act, 1948, requiring him to remedy certain breaches of covenant within two months of service. The first, dealing with thatching and the cutting of weeds, was dated 8th September, 1956, and the second, dealing with non-payment of rent, was dated 5th October, 1956. The landlords then served a notice to quit dated 13th November, 1956, under s. 24 (2) (*d*) of the Act, stating as a reason non-compliance with the notice of 8th September. The tenant served a counter-notice dated 24th November, 1956, under the Agriculture (Control of Notices to Quit) Regulations, 1948, requiring all questions arising from the reasons stated in the notice to quit to be submitted to arbitration. By virtue of the regulations the operation of the notice to quit was suspended. Nothing further was done by either party with regard to this arbitration. The landlords then served a further notice to quit, dated 6th December, 1956, under s. 24 (2) (*d*), stating as reasons non-compliance with the notice of 8th September, and non-payment of the rent required to be paid by the notice of 5th October within two months. In a letter accompanying this notice to quit the landlords' agent stated that it was given because the rent had not been received at the end of normal office hours, viz., 5.30 p.m., on 6th December. The time for compliance given in the 5th October notice did not expire until midnight on 6th December. The tenant received the notice to quit on 7th December. In an action by the landlords for possession, the tenant contended that the 6th December notice to quit was bad in respect of the reason for non-payment of rent because it was given before the time for compliance in the 5th October notice had expired; and that, because it contained a reason which had been referred to arbitration, viz., failure to comply with the 8th September notice, it was invalid or suspended pending the arbitration.

PAULL, J., said that in the notice to quit of 6th December the reason given in respect of the non-payment of rent was a perfectly good and proper reason by the time the notice was delivered to the tenant on 7th December, which was in this case the time he had to accept as being the proper time for the purpose of considering whether the landlords brought themselves within s. 24 (2) (*d*) of the Act. On that date it was a good reason because the rent had not been paid within the time limited by the 5th October notice. That ground of defence, therefore, disappeared. Further, since the notice to quit was good in respect of the reason just mentioned, it operated in respect of that reason at once and was not suspended until the arbitration under the 13th November notice to quit had been determined. The 6th December notice to quit was clear and unambiguous and was not invalid because a reason was added which could not be pursued until the arbitration was determined.

APPEARANCES: *D. M. Scott* and *J. B. S. Edwards* (*Ellis, Bickersteth & Hazel*, for *James Mason, Tucker & Son*, Newton Abbot); *H. Heathcote-Williams*, Q.C., and *T. G. Field-Fisher* (*Kinch & Richardson*, for *Carter, Fisher & Co.*, Torquay).

[Reported by A. D. RAWLEY, Esq., Barrister-at-Law] **[1 W.L.R. 0**

Probate, Divorce and Admiralty Division

DIVORCE: SEPARATION AGREEMENT

Hall *v.* Hall

Wrangham, J. 11th December, 1959

Petition for divorce.

On 4th June, 1952, after a violent scene, the husband left the wife and matrimonial home, and on 3rd July, 1952, both parties signed an agreement providing for maintenance and other matters, and reciting that it was no longer possible for them to reside together as man and wife, and that they had agreed that they should live separately. By a letter dated 3rd April, 1953, and on repeated visits to the wife for week-ends and holidays the husband asked her for a reconciliation, but she steadfastly refused to live with him again. The husband continued to pay under the agreement as he regarded it as his moral duty to provide for his wife. The husband petitioned for a divorce on the ground of desertion.

WRANGHAM, J., said that the agreement to live separately recited in the written maintenance agreement was an agreement for an indefinite period; had it been for the joint lives of the parties, or any other defined period, the recital would have said so. It followed that it was terminable on the will of either party, there being nothing to show that notice was required. By his letter in April, 1953, and his subsequent conversations the husband made it clear that he was putting an end to the agreement. The separation agreement being out of the way, the wife had no legal right to refuse her husband's genuine offer of reconciliation, and from the date of her refusal had been in desertion. There must, therefore, be a decree nisi upon the petition. Decree nisi.

APPEARANCES: *Edward Lyons* (*Lionel Altman*, Leeds); *H. G. Bennett* (*Morrish & Co.*, Leeds).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [1 W.L.R. 1

THE LAW SOCIETY

The president of THE LAW SOCIETY, Sir Sydney Littlewood, gave a luncheon party on 4th January at 60 Carey Street, W.C. The guests were:—The Lord Chancellor, the Danish Ambassador, Sir Joseph Simpson, Mr. R. P. Baulkwill, Mr. Geoffrey Rippon, M.P., Mr. Ernest Lond, Mr. D. T. Hicks, Mr. J. S. Widdows and Sir Thomas Lund.

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(*continued on p. xvii*)

IN WESTMINSTER AND WHITEHALL

STATUTORY INSTRUMENTS

Appeal Aid Certificate (Fees and Expenses) Rules, 1959. (S.I. 1959 No. 2239.) 4d.

Argyll County Council (Loch Poit Na H—I) Water Order, 1959. (S.I. 1959 No. 2298.) 5d.

Bankruptcy Fees (Amendment) Order, 1959. (S.I. 1959 No. 2261.) 5d.

Colne Valley Water (Charges) Order, 1959. (S.I. 1959 No. 2195.) 5d.

Exchange of Securities (No. 4) Rules, 1959. (S.I. 1959 No. 2277.) 6d.

Fife County Council (Extension of Time) Water Order, 1959. (S.I. 1959 No. 2251.) 4d.

Fire Services Act, 1959 (Commencement No. 3) Order, 1959. (S.I. 1959 No. 2260.) 4d.

Increase of Pensions (Modification) (No. 3) Regulations, 1959. (S.I. 1959 No. 2275.) 4d.

Kirkcaldy Corporation (Lina Borehole) Water Order, 1959. (S.I. 1959 No. 2297.) 5d.

London–Canterbury–Dover Trunk Road (Commercial Road, Rochester) Order, 1959. (S.I. 1959 No. 2246.) 4d.

Maidstone Water (Charges) Order, 1959. (S.I. 1959 No. 2281.) 5d.

Marginal Agricultural Production (Scotland) (No. 2) Scheme, 1959. (S.I. 1959 No. 2313.) 5d.

Miscellaneous Mines (Explosives) Regulations, 1959. (S.I. 1959 No. 2258.)

Pedestrian Crossings (England and Wales) (Amendment) Regulations, 1959. (S.I. 1959 No. 2296.) 5d.

Police (No. 4) Regulations, 1959. (S.I. 1959 No. 2274.) 5d.

Poor Prisoners' Defence (Fees and Expenses) Regulations, 1959. (S.I. 1959 No. 2240.) 5d.

Quarries (Explosives) Regulations, 1959. (S.I. 1959 No. 2259.) 9d.

Stopping up of Highways Orders, 1959:—

City and County Borough of Coventry (No. 13). (S.I. 1959 No. 2220.) 5d.

County of Devon (No. 8). (S.I. 1959 No. 2221.) 5d.

County of Devon (No. 9). (S.I. 1959 No. 2269.) 5d.

Isle of Ely (No. 1) Order, 1956 (Variation). (S.I. 1959 No. 2249.) 5d.

County of Essex (No. 21). (S.I. 1959 No. 2237.) 5d.

County of Gloucester (No. 23). (S.I. 1959 No. 2233.) 5d.

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County of Somerset (No. 9). (S.I. 1959 No. 2247.) 5d.

County of Somerset (No. 10). (S.I. 1959 No. 2234.) 5d.

County of Somerset (No. 11). (S.I. 1959 No. 2248.) 5d.

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County Borough of West Ham (No. 3). (S.I. 1959 No. 2268.) 5d.

County of Wilts (No. 12). (S.I. 1959 No. 2250.) 5d.

County of Worcester (No. 10). (S.I. 1959 No. 2235.) 5d.

Superannuation (Service in Certain Places Abroad) (Amendment) (No. 3) Order, 1959. (S.I. 1959 No. 2276.) 5d.

Supreme Court Fees (Amendment) Order, 1959. (S.I. 1959 No. 2262.) 4d.

Supreme Court (Non-Contentious Probate) Fees (No. 2) Order, 1959. (S.I. 1959 No. 2263.) 4d.

Trent River Board (Alteration of Boundaries of the Levee of Hatfield Chase and the West Axholme Drainage District) Order, 1959. (S.I. 1959 No. 2280.) 5d.

Wages Regulation (Retail Furnishing and Allied Trades) (No. 2) Order, 1959. (S.I. 1959 No. 2256.) 1s.

West Hampshire (Water Charges) Order, 1959. (S.I. 1959 No. 2266.) 5d.

REVIEWS

Farm Rents. A comparison of current and post farm rents in England and Wales. By D. R. DENMAN, M.A., M.Sc., Ph.D., and V. F. STEWART, M.A. pp. 206. 1959. London: George Allen & Unwin, Ltd. £1 7s. 6d. net.

The eighteen months or so spent in compiling this report have been well spent. Acting under the auspices of the Department of Estate Management, University of Cambridge, the authors have collected and classified information about more than 12,000 holdings covering some six and a half million acres, and the report, liberally illustrated by tables and diagrams, deals fully with questions of the effects of type (holding and estate), size and standard of fixed equipment, of tenancy conditions and of "ownership personality," as they affect the level and changes of level of farm rents since 1945.

Chapters devoted to tenancy conditions and determination procedures (chapters VII, VIII and IX) and cause of rent change (chapter XI) will, of course, be of the greatest interest to lawyers. The authors do not claim to have discovered all the reasons for changes, and it is very much to their credit that they frequently recognise the fact that theory and practice do not always go hand in hand. Thus, they rightly observe that working arrangements with regard to maintenance often disregard the letter of the law, though they adopt the terms of the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations, 1948, as "a standard." When dealing with determination procedures, they report that rents awarded by arbitrators and independent valuers (as compared with negotiated rents) average less than those fixed by other methods, such as negotiation, the difference being, however, slight in the case of negotiations with sitting tenants—which, it is said, may be due to landlords casting their eyes over their shoulders to see what arbitrators and valuers are doing and to tenants' consciousness of the protection of security of tenure, or to arbitrators casting *their* eyes over their shoulders, curious to know what rent landlords are agreeing with sitting tenants. Thus, "it is not possible to say whether mediatorial rents have influenced sitting tenant negotiations or vice versa. The evidence, however, points to an affinity between the two, a mutual interaction. . . ."

Whether such events as a change of tenancy or a boundary alteration should be considered a cause of a rent change seems open to question, but the fact that such events do occasion rent changes again draws attention to the importance of the human element so well recognised by the authors.

One criticism which does, however, suggest itself is this: the phenomenon of currency inflation is not mentioned. It is fair to say that it may be considered beyond terms of reference; but those who study the tables and diagrams and the comments and expositions should bear in mind that the value of money can change as well as the value of the land. Viewed as a whole, however, the authors have done a fine job of work.

Rivers in International Law. By F. J. BERBER, Dr. Jur. Published under the auspices of the London Institute of World Affairs. pp. xi and (with Index) 296. 1959. London: Stevens & Sons, Ltd. New York: Oceana Publications, Inc. £2 5s. net.

This book deals with a problem of international law whose approximate counterpart, the rights of land owners over the water of rivers flowing through their land, is familiar to English lawyers. In English law this problem has long been solved but in international law no solution has yet been reached. States stand upon their sovereignty and deny the right of anyone to claim to interfere with what they do within their territory, and no Legislature or court exists with power to coerce them. The result is often that upper riparian states claim the right to use as much water as they like, regardless of hardships which may be

inflicted on lower riparian states. The demand for water is, moreover, growing and the problem is becoming more acute. Disputes about rivers are not new, but in the past they were mainly concerned with rights of passage. Nowadays it is more often the flow of water which causes concern and to many countries this may be truly a vital matter.

Professor Berber's book is mainly devoted to an exhaustive study of existing law but there is a short chapter on its future. There is very little general customary or treaty law on rivers and he is, therefore, obliged to go more fully than is usual into the subsidiary sources of the law. One feels, however, that here he does overload the text with detail which could better appear in an appendix. The same is so of chapter IV, which is not much more than a list, in some cases with comment, of all the water treaties in existence anywhere in the world. This makes heavy reading, but if positive conclusions emerged one could overlook this. In fact, as one would have expected in view of the differences in conditions, no positive general conclusion is possible. It is, of course, useful to have the material collected together, but this book would be better if it were shorter, though it has, nevertheless, considerable merits, for it is undogmatic, accurate and thoughtful.

With certain of the author's conclusions it is possible to differ, however. The conclusion of individual treaties is, as he rightly says, the best means of progress, because conditions and needs vary greatly from place to place. But is there, as he implies, in general no right to water unless there is a treaty? Is it not better to say that unless there is a treaty *existing* rights can be only imperfectly realised? In other words, that what a treaty does is to make an admittedly vague right effective, rather than to create the right? We consider that in this chapter the author takes too narrow a view of the position of international law. It is rare to-day to find the extract from the judgment in the *Lotus* (1882), 7 P.D. 199, cited with approval. The author is right in being wary of facility, but one can be over-cautious. States on the whole prefer to obey the law. Learned works like this one will themselves be a source of the law in future and the progress for which the author looks would be more easily made if he had been able to reach different conclusions from his abundant evidence.

BOOKS RECEIVED

Hanson's Death Duties. Tenth Edition. Fourth Cumulative Supplement (to 1st August, 1959). By HENRY E. SMITH, LL.B. (Lond.), and P. H. FLETCHER, LL.B. (Lond.), of Lincoln's Inn, Barrister-at-Law. pp. xii and 157. 1959. London: Sweet & Maxwell, Ltd. £1 1s. net.

Oyez Table No. 2: Legal Costs on a Sale of Land. Sixth Edition. 1960. London: The Solicitors' Law Stationery Society, Ltd. 3s. net.

Oyez Table No. 12: High Court Costs on and after 1st January, 1960. Prescribed by Apps. 2 and 3 to the Supreme Court Costs Rules, 1959. pp. 10. 1960. London: The Solicitors' Law Stationery Society, Ltd. 4s. net.

The Annual Charities Register and Digest. Being a classified register of charities. Sixty-seventh Edition. pp. lvi and (with Index) 438. 1960. London: Butterworth & Co. (Publishers), Ltd., and the Family Welfare Association. 17s. 6d. net.

POINTS IN PRACTICE

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. They should be* brief, typewritten in duplicate, *and accompanied by the name and address of the sender* on a separate sheet, *together with a* stamped addressed envelope. *Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all

Mortgage for Life

Q. We act for Mrs. *A* and Mr. *B*. Mrs. *A* is the owner of a property and under her existing will she has bequeathed the property to Mr. *B*. Mrs. *A* is still alive, but is quite elderly. For certain health reasons Mrs. *A* has to leave the property and go into a flat. She wishes to give the property to Mr. *B* but he is to pay to her £13 13s. per month, which represents the rent which she will have to pay at her flat, and the suggested arrangement is that Mr. *B* pays Mrs. *A* £13 13s. a month during her life and that such payment will cease on her death. The usual arrangement is a conveyance of the property reserving an annuity during the life of Mrs. *A*. Difficulties, however, arise as to deduction of income tax from the annuity and repayment claims, etc., and the parties therefore wish to avoid this. We have therefore suggested that Mrs. *A* might convey the property to Mr. *B* at an agreed price, say £2,500. Mr. *B* will then execute a mortgage for £2,500 in favour of Mrs. *A* free of interest, but repayable by capital instalments of £13 13s. per month. This we consider will avoid the question of tax. Mrs. *A* will at the same time sign a new will whereby she releases Mr. *B* from all the balance outstanding under the mortgage. Mr. *B's* main objection to this is that he and his wife and son who will take the property might sign the mortgage and Mrs. *A* would duly make a new will, but between the present time and Mrs. *A's* date of death anything could happen, and Mrs. *A* might be unduly influenced to make a new will by some third party so that, upon Mrs. *A's* death, Mr. *B* might suddenly find that he still owes the balance of the moneys under the mortgage and would be required to continue paying the £13 13s. per month. Mr. *B* suggests that a clause be inserted in the mortgage that upon the death of Mrs. *A* he shall be released from all moneys outstanding under the mortgage at the time of her death so that the mortgage will operate independently from any provisions in the will. He is a retired bank manager and says that he has seen this sort of provision. We have searched the precedent books and can find no precedent for this, but on the other hand we can find no objection to it. Can you please say whether a mortgage for life is permitted, and if so, can you refer us to a precedent? So far as making title in due course is concerned would a vacating receipt have to be endorsed on the mortgage or would a death certificate of Mrs. *A* be sufficient?

A. We agree that in principle there seems no objection to a mortgage for life, although we too have been unable to find any precedent for such a transaction. But while we feel that there can be no objection to the proposed scheme we wonder whether the Inland Revenue might question the capital nature of the payments under the mortgage. If this should happen the parties might find themselves in the very difficulties which they are seeking to avoid. As far as making title in due course is concerned we feel that it would be wiser to have a vacating receipt endorsed on the mortgage. Another possible solution occurs to us. It may be possible for Mrs. *A* to assign her flat to Mr. *B*. If this can be done then Mr. *B* could then grant a sub-lease to Mrs. *A* at a peppercorn rent; the sub-lease being for a day shorter than Mr. *B's* lease and being determinable by him on Mrs. *A's* death. Mrs. *A* could then transfer the house to Mr. *B* by a simple deed of gift.

Estate Duty—DIRECTOR'S PAYMENTS TO COMPANY TO REDUCE INDEBTEDNESS—WHETHER TRANSFERS—FINANCE ACT, 1940, s. 46

Q. J. F., Ltd., is a private company of which *F*, deceased, was, until his death in January, 1956, managing director. Until 4½ years before his death, *F* held approximately 75 per cent. of the issued share capital, but in 1951 he executed certain transfers following which there were two bonus issues, the result of which

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Esher.—EWBANK & CO., in association with Mann & Co., Est. 1891. Tel. 3537/8. Offices throughout West Surrey.

SURREY (*continued*)

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Ewell.—WILTSHIRES, Estate Agents, Surveyors, Auctioneers and Valuers, 55 High Street. Tel. Ewell 1665/6

Farnham.—H. B. BAVERSTOCK & SON, Chartered Auctioneers and Estate Agents, 4 Castle Street. Tel. 5274 (2 lines).

Farnham.—CUBITT & WEST. Tel. Farnham 5261. Valuers, Surveyors, Estate Agents.

Farnham.—GERMAN, ADDY & CO. (Est. 1903). Chartered Auctioneers and Estate Agents, Surveyors and Valuers, 111 West Street. Tel. 5283/4

Farnham—HOAR & SANDERSON incorporating C. BRIDGER & SONS. Est. 1856. Tel. 4189.

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Godalming.—HOAR & SANDERSON incorporating C. BRIDGER & SONS. Est. 1856 Tel. 1010/1.

Guildford.—HOAR & SANDERSON incorporating C. BRIDGER & SONS. Est. 1856. Tel. 67781/2.

Guildford.—MANN & CO., Est. 1891, 22 Epsom Road. Tel. 62911/2. Offices throughout West Surrey

Guildford.—MESSENGER, MORGAN & MAY, Chartered Surveyors, 8 Quarry Street. Tel. 2992/4.

Haslemere.—H. B. BAVERSTOCK & SON, Chartered Auctioneers and Estate Agents, 20 High Street. Tel. 1207.

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Walton.—MANN & CO., Est. 1891, 38 High Street. Tel. 2331/2. Offices throughout West Surrey.

Walton and Weybridge.—HIGBY & CHARD (Consultants: George Geen, M.A., F.R.I.C.S., V. C. Lawrence, F.R.I.C.S.), 45 High Street Walton-on-Thames Tel. 2487/8.

Walton/Weybridge.—WARING & CO. Est. 1890. Surveyors, Estate Agents, Auctioneers and Valuers. Tel. Walton-on-Thames 24151/2.

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Weybridge.—EWBANK & CO., in association with Mann and Co., Est. 1891. Tel. 2323/5. Offices throughout West Surrey.

Weybridge and District.—J. E. PURDIE & SON, Chartered Surveyors and Estate Agents, 1 and 3 Queens Road, Weybridge. Tel. 3307 (3 lines) and at Walton-on-Thames.

(*continued on p. xviii*)

SURREY (*continued*)

Weybridge and District.—WATERER & SONS, Chartered Auctioneers and Estate Agents, Surveyors, etc. Tel. 3838/9.

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SUSSEX

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Arundel and Rustington.—HEASMAN & PARTNERS. Tel. Arundel 2323, Rustington 900

Bexhill-on-Sea.—JOHN BRAY & SONS (Est. 1864), Estate Agents, Auctioneers and Valuers, 1 Devonshire Square. Tel. 14.

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Brighton.—MELLOR & MELLOR, Chartered Auctioneers and Estate Agents, 110 St. James's Street. Tel. 682910.

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Brighton.—FRANK STONE & PARTNERS, F.A.L.P.A., 84 Queen's Road. Tel. Brighton 29252/3.

Brighton and Hove.—WILLIAM WILLETT, LTD., Auctioneers and Estate Agents, 52 Church Road, Hove. Tel. Hove 34055. London Office, Sloane Square, S.W.1. Tel. Sloane 8141.

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Chichester and Bognor Regis.—WHITEHEAD & WHITEHEAD, Chartered Auctioneers and Estate Agents, South Street, Chichester. Tel. 3031 (5 lines). Station Road, Bognor Regis. Tel. 2237/8.

Crawley.—JOHN CHURCHMAN & SONS, Chartered Surveyors, Valuers, Land Agents. Tel. Crawley 1899.

Crawley.—WM. WOOD, SON & GARDNER, Surveyors, and Valuers. Tel. Crawley 1.

Crowborough.—DONALD BEALE & CO., Auctioneers, Surveyors and Valuers. The Broadway. Tel. Crowborough 3333.

Eastbourne.—FRANK H. BUDD, LTD., Auctioneers, Surveyors, Valuers, 1 Bolton Road. Tel. 1860

Eastbourne.—A. C. DRAYCOTT, Chartered Auctioneers and Estate Agents, Estate Offices, Friston Hill, East Dean, Nr. Eastbourne. Tel. East Dean 2277.

Eastbourne.—HEFFORD & HOLMES, F.A.I., Chartered Auctioneers and Estate Agents, 51 Gildredge Road. Tel. Eastbourne 7840.

Eastbourne.—OAKDEN & CO., Estate Agents, Auctioneers and Valuers, 24 Cornfield Road. Est. 1897. Tel. 1234/5.

Eastbourne and District.—FARNHAM & CO., Auctioneers, Estate Agents and Valuers, 6 Terminus Road, Eastbourne. Tel. 4433/4/5. Branch at 87 Eastbourne Road, Lower Willingdon and 4 Grand Parade, Polegate.

East Grinstead.—Messrs. P. J. MAY (P. J. May and A. L. Apthorp, F.R.I.C.S., F.A.I., M.R.San.I.), 2 London Road Tel. East Grinstead 315/6.

East Grinstead.—TURNER, RUDGE & TURNER, Chartered Surveyors. Tel. East Grinstead 700/1.

Hassocks and Mid-Sussex.—AYLING & STRUDWICK, Chartered Surveyors. Tel. Hassocks 882/3.

Hastings, St. Leonards and East Sussex.—DYER & OVERTON (H. B. Dyer, D.S.O., F.R.I.C.S., F.A.I.; F. R. Hynard, A.R.I.C.S.), Consultant Chartered Surveyors. Estd. 1892. 6-7 Havelock Road, Hastings. Tel. 5661/2.

Hastings, St. Leonards and East Sussex.—WEST (Godfrey, F.R.I.C.S., F.A.I.) & HICKMAN, Surveyors and Valuers, 50 Havelock Road, Hastings. Tel. 6688/9.

Haywards Heath and District.—DAY & SONS, Auctioneers and Surveyors, 115 South Road. Tel. 1580. And at Brighton and Hove.

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Lewes and Mid-Sussex.—CLIFFORD DANN, B.Sc., F.R.I.C.S., F.A.I., Fitzroy House, Lewes. Tel. 750. And at Ditchling and Hurstpierpoint.

Seaford.—W. G. F. SWAYNE, F.A.I., Chartered Auctioneer and Estate Agent, Surveyor and Valuer, 3 Clinton Place. Tel. 2144.

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Sussex and Adjoining Counties.—JARVIS & CO., Haywards Heath. Tel. 700 (3 lines).

West Worthing and Goring-by-Sea.—GLOVER & CARTER, F.A.L.P.A., 110 George V Avenue, West Worthing. Tel. 8686/7. And at 6 Montague Place, Worthing. Tel. 6264/5.

Worthing.—A. C. DRAYCOTT, Chartered Auctioneers and Estate Agents, 8-14 South Street, Lancing, Sussex. Tel. Lancing 2828.

Worthing.—EYDMANN, STREET & BRIDGE (Est. 1864), 14 Chapel Road. Tel. 4060.

Worthing.—HAWKER & CO., Chartered Surveyors, Chapel Road, Worthing. Tel. Worthing 1136 and 1137.

Worthing.—PATCHING & CO., Est. over a century. Tel. 5000. 5 Chapel Road.

Worthing.—JOHN D. SYMONDS & CO., Chartered Surveyors, Revenue Buildings, Chapel Road. Tel. Worthing 623/4.

WARWICKSHIRE

Birmingham and District.—SHAW, GILBERT & CO., F.A.I., "Newton Chambers," 43 Cannon Street, Birmingham, 2. Midland 4784 (4 lines).

Coventry.—GEORGE LOVEITT & SONS (Est. 1843), Auctioneers, Valuers and Estate Agents, 29 Warwick Row. Tel. 3081/2/3/4.

Coventry.—CHAS. B. ODELL & CO. (Est. 1901), Auctioneers, Surveyors, Valuers and Estate Agents, 53 Hertford Street. Tel. 22037 (4 lines).

Leamington Spa and District.—TRUSLOVE & HARRIS, Auctioneers, Valuers, Surveyors. Head Office: 38/40 Warwick Street, Leamington Spa. Tel. 1861 (2 lines).

Rugby and District.—WIGGINS & RUSSELL, Auctioneers, etc., 14 Regent Place, Rugby (Tel. 2548).

Sutton Coldfield.—QUANTRILL SMITH & CO., 4 and 6 High Street. Tel. SUT 4481 (5 lines).

WESTMORLAND

Kendal.—MICHAEL C. L. HODGSON, Auctioneers and Valuers, 10a Highgate. Tel. 1375.

Windermere.—PROCTER & BIRKBECK (Est. 1841), Auctioneers, Lake Road. Tel. 688.

WILTSHIRE

Bath and District and Surrounding Counties.—COWARD, JAMES & CO., incorporating FORTT, HATT & BILLINGS (Est. 1903), Surveyors, Auctioneers and Estate Agents. Special Probate Department. New Bond Street Chambers. 14 New Bond Street, Bath. Tel. Bath 3150, 3584, 4268 and 61360.

Marlborough Area (Wilts, Berks and Hants Borders).—JOHN GERMAN & SON (Est. 1840), Land Agents, Surveyors, Auctioneers and Valuers, Estate Offices, Ramsbury, Nr. Marlborough. Tel. Ramsbury 361/2. And at Ashby-de-la-Zouch, Burton-on-Trent and Derby.

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Kidderminster.—CATTELL & YOUNG, 31 Worcester Street. Tel. 3075 and 3077. And also at Droitwich Spa and Tenbury Wells.

Worcester.—BENTLEY, HOBBS & MYTTON, F.A.I., Chartered Auctioneers, etc., 49 Foregate Street, Tel 5194/5.

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Bradford.—NORMAN R. GEE & PARTNERS, F.A.I., 72/74 Market Street, Chartered Auctioneers and Estate Agents. Tel. 27202 (2 lines). And at Keighley.

Bradford.—DAVID WATERHOUSE & NEPHEWS, F.A.I., Britannia House, Chartered Auctioneers and Estate Agents. Est. 1844. Tel. 22622 (3 lines).

Hull.—EXLEY & SON, F.A.L.P.A. (Incorporating Officer and Field), Valuers, Estate Agents, 70 George Street. Tel. 33991/2.

Leeds.—SPENCER, SON & GILPIN, Chartered Surveyors, 2 Wormald Row, Leeds, 2. Tel. 3-0171/2.

Scarborough.—EDWARD HARLAND & SONS, 4 Aberdeen Walk, Scarborough. Tel. 834.

SOUTH WALES

Cardiff.—DONALD ANSTEE & CO., Chartered Surveyors, Auctioneers and Estate Agents, 91 St. Mary Street. Tel. 30429.

Cardiff.—S. HERN & CRABTREE, Auctioneers and Valuers. Established over a century. 93 St. Mary Street. Tel. 29383.

Cardiff.—J. T. SAUNDERS & SON, Chartered Auctioneers & Estate Agents. Est. 1895. 16 Dumfries Place, Cardiff. Tel. 20234/5, and Windsor Chambers, Penarth. Tel. 22.

Cardiff.—JNO. OLIVER WATKINS & FRANCIS, Chartered Auctioneers, Chartered Surveyors, 11 Dumfries Place. Tel. 33489/90.

Swansea.—E. NOEL HUSBANDS, F.A.I., 139 Walter Road. Tel. 57801.

Swansea.—ASTLEY SAMUEL, LEEDER & SON (Est. 1863), Chartered Surveyors, Estate Agents and Auctioneers, 49 Mansel Street, Swansea. Tel. 55891 (4 lines).

NORTH WALES

Denbighshire and Flintshire.—HARPER WEBB & CO., (incorporating W. H. Nightingale & Son), Chartered Surveyors, 35 White Friars, Chester. Tel. 20685.

Wrexham, North Wales and Border Counties.—A. KENT JONES & CO., F.A.I., Chartered Auctioneers and Estate Agents, Surveyors and Valuers. The Estate Offices, 43 Regent Street, Wrexham. Tel. 3483/4.

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was that under the law as it then stood only approximately one-fifth of the issued share capital became liable to duty on his death. Some two years after his death the Estate Duty Office intimated a claim under s. 46 of the Finance Act, 1940, and their reason for intimating this claim can be briefly summarised as follows. The deceased maintained a loan account with the company for very many years and his remuneration and bonuses would be credited to this account and he would draw therefrom in respect of his current expenses, rather in the way one maintains a current account at a bank. Between the years 1920 and 1954 certain payments were made by the deceased to the credit of his loan account, which although small in amount would, it seems—all things being equal—be considered to be transfers within the meaning of the Finance Act, 1940. It is not material to consider these payments unduly as it is accepted that subject to the remarks hereinafter contained they would be transfers. However, the company's accountants point out that at no time between 1920 and 1954 was the deceased's loan account actually in credit. The reason for this was that the deceased's remuneration would be voted at the meeting held to consider the previous year's accounts of the company (which would probably be held in June of the year following the financial year in question) which, at that time, ran from 1st January to 31st December and in practice the deceased would vote himself sufficient remuneration by way of director's fees and bonus to cover the drawings which he had made in the previous year. It is accordingly suggested that as at all material times the deceased owed money to the company (his loan account being in debit) any payments made by the deceased to the credit of his loan account were in part payment of a debt due from the deceased to the company. Such payments therefore do not increase the total resources of the company and did not create a debt due from the company (and thus would not appear to be "debentures" within the very wide meaning assigned to that term in this connection). Do payments by a director to a company to which he owes money fall to be treated as transfers and thus render that company liable to a claim for duty under s. 46 of the Finance Act, 1940 ?

A. In its terms the Finance Act, 1940, s. 46 (1), applies where a person has made to a company "a transfer of any property." By the Finance Act, 1951, s. 72 (2), any reference to "a transfer of property" is to include a reference to a payment of money. It seems to us therefore that if the question be asked: Did the deceased pay any money to the company ? the answer must be: Yes, he paid money to the company in order to reduce his indebtedness to the company. That being so, we should have thought that the payments were within s. 46 and we are not sure why it should be suggested that only such transfers or payments are within s. 46 as operate to increase the resources of the company.

"THE SOLICITORS' JOURNAL," 14th JANUARY, 1860

On the 14th January, 1860, THE SOLICITORS' JOURNAL reported the speech of the aged Lord Chancellor Campbell when in his densely crowded court in the old Hall of Lincoln's Inn he began the swearing in of the 550 members of the Inns of Court Volunteer Rifle Corps: "The ardour with which you participate in the national movement is very creditable to the profession to which we belong. You are ready to defend the liberties of your country, not only in the forum, but in the field. Gentlemen, this movement is not prompted by any immediate apprehension of danger nor from suspicion of the designs of any particular foreign ruler or State. Fortunately we are in amity with all nations . . But the opinion generally prevails . . . that the martial disposition of our population has not of late years been sufficiently encouraged, and that our defences against foreign invasion have not kept pace with the increased facilities of effecting a landing on our sacred soil. Hence the danger of panic at home and of holding out a temptation abroad to take advantage of our supposed unpreparedness. England is free from all notion of aggression and we desire . . . to cultivate the pursuits of peace; but to secure these blessings we must bear in mind that war may come upon us unexpectedly and that to ward off invasion we must be prepared to repel it. I myself was a soldier . . . I served in a most distinguished corps, the Inns of Court Volunteers . . . remarkable for its discipline and efficiency, and had the honour to be reviewed in Hyde Park by King George III with 100,000 volunteers . . . ready to march to the coast on the first alarm of the sailing of the armada of Boulogne which only waited for a fair wind for Sandwich or Pevensey . . . but the Government of that time must be blamed for allowing all the volunteer corps in the Kingdom, amounting I believe, to between 300,000 and 400,000 men, to be disbanded as soon as peace was proclaimed."

NOTES AND NEWS

NEW YEAR HONOURS

The following names can be added to the list of New Year Honours which we published at pp. 28 and 29 :—

C.B.E. (Military)

Colonel GEOFFREY BRIDGMAN GREY, T.D., D.L., B.A. Admitted 1937.

O.B.E. (Military)

Lieutenant-Colonel JOHN GREGSON CUMBERLEGE, T.D., Army Legal Services Staff List. Admitted 1938.

Lieutenant-Colonel WILLIAM ABBOTT LARGE. Admitted 1937.

Lieutenant-Colonel JOHN WILLIAM ARTHUR OLLARD, D.L., Alderman, Isle of Ely County Council. Admitted 1919.

M.B.E. (Civil)

GEORGE EDWARD GRAHAM GADSDEN, D.S.O., T.D. Admitted 1929.

MIDDLESEX DEEDS REGISTRY

The indices to the memorials of the Middlesex Deeds Registry, 1709 to 1837, have been published on twenty-two reels of microfilm.

PUBLIC PATH ORDERS: REGULATIONS

The Highways Act, 1959, which became operative on 1st January, 1960, repealed certain sections of the National Parks and Access to the Countryside Act, 1949 (cf. Sched. XXV to the 1959 Act), and the Public Path Orders Regulations, 1959 (S.I. 1959 No. 2245), replace those parts of the National Parks and Access to the Countryside Regulations, 1950 (S.I. 1950 No. 1066), which relate to public path creation, extinguishment and diversion orders. Although the 1959 regulations do not differ in substance from the old ones, opportunity has been taken to shorten the forms of notice which have to be published.

SOLICITORS ACT, 1957

On 16th December, 1959, an order was made by the Disciplinary Committee constituted under the Solicitors Act, 1957, that John Bryan Smith, of No. 20 Market Place, Ossett; No. 25 Barstow Square, Wakefield; No. 70 Albion Street, Leeds, and No. 24 Bradford Road, Dewsbury, be suspended from practice as a solicitor for a period of one year from 1st January, 1960, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

DEVELOPMENT PLANS

Proposals for Alterations or Additions Submitted to Minister

Title of plan	Districts affected	Date of notice	Last date before which written objections or representations may be made
Bath City Council	City and County Borough of Bath	14th November, 1959	30th December, 1959
County Borough of Chester	County Borough of Chester	17th December, 1959	1st February, 1960
County Council of Durham	Chester-le-Street Urban and Rural Districts	15th December, 1959	30th January, 1960
County Council of Essex	Part of Ilford Borough	3rd December, 1959	18th January, 1960
Kent County Council	Part of Margate Borough	4th December, 1959	18th January, 1960
London County Council	Fulham Borough	30th December, 1959	16th February, 1960
Middlesex County Council	Heston and Isleworth Borough	4th January, 1960	15th February, 1960
	Willesden Borough	7th December, 1959	23rd January, 1960
City and County of Newcastle upon Tyne	Part of City and County of Newcastle upon Tyne	14th November, 1959	5th January, 1960
County Borough of Oldham	County Borough of Oldham	4th December, 1959	19th January, 1960
Oxfordshire County Council	Bicester Urban District; Ploughley Rural District	31st December, 1959	23rd February, 1960
Somerset County Council	Norton-Radstock Urban District	11th November, 1959	31st December, 1959
Surrey County Council	Egham, Esher, Farnham, Haslemere and Woking Urban Districts; Bagshot, Dorking and Horley, Godstone, Guildford and Hambledon Rural Districts; Epsom and Ewell, Godalming and Guildford Boroughs	27th November, 1959	1st February, 1960

Amendments by Minister

Title of plan	Districts affected	Date of notice	Last date for applications to High Court
County Borough of Bolton	County Borough of Bolton	15th December, 1959	6 weeks from 15th December, 1959
City and County of Bristol	City and County of Bristol	1st January, 1960	6 weeks from 1st January, 1960
County Borough of Burnley	County Borough of Burnley	18th December, 1959	6 weeks from 19th December, 1959
County Council of Durham	Stockton Rural District	7th December, 1959	6 weeks from 7th December, 1959
Holland (Lincs) County Council	Parts of Holland County Council	1st January, 1960	6 weeks from 1st January, 1960
Northampton County Borough	Northampton County Borough	1st January, 1960	6 weeks from 5th January, 1960
Northumberland County Council	Hexham and Seaton Valley Urban Districts; Castle Ward Rural District	16th December, 1959	6 weeks from 17th December, 1959

Approval by Minister

Title of plan	Date of notice	Last date for applications to High Court
City and County Borough of Bradford	30th December, 1959	6 weeks from 5th January, 1960
County Borough of Cardiff	23rd December, 1959	6 weeks from 23rd December, 1959

ROYAL COMMISSION ON THE POLICE

The names of the fourteen members of the Royal Commission on the Police, who, under the chairmanship of Sir Henry Willink, are to review the constitutional position of the police throughout Great Britain and their relationship with the public, were announced on 4th January. They are: Alderman J. C. Burman, J.P., a former Lord Mayor of Birmingham; Mr. W. I. R. Fraser, Q.C., Dean of the Faculty of Advocates; Lord Geddes of Epsom, President of the Trades Union Congress, 1954–55; Dr. A. L. Goodhart, Q.C., Master of University College, Oxford, and former Professor of Jurisprudence in the University; Mr. Leslie Hale, M.P., Solicitor; Mr. Alastair Hetherington, Editor of the *Guardian*; Mr. John Hobson, Q.C., J.P., M.P., Recorder of Northampton; Sir Ian Jacob, formerly Director-General of the British Broadcasting Corporation; Dr. J. W. MacFarlane, Vice-Convener of Renfrewshire; Mrs. Margaret Alison Richardson, J.P., a London juvenile court chairman; Sir James Robertson, J.P., formerly Rector of Aberdeen Grammar School; Mrs. Ryder Runton, J.P.; Judge Owen Temple Temple-Morris, Q.C., Chairman of Monmouth Quarter Sessions; and Sir George Turner. The commission's terms of reference are:—

> To review the constitutional position of the police throughout Great Britain, the arrangements for their control and administration and, in particular, to consider: (1) the constitutions and functions of local police authorities; (2) the status and accountability of members of police forces including chief officers of police; (3) the relationship of the police with the public and the means of ensuring that complaints by the public against the police are effectively dealt with; and (4) the broad principles which should govern the remuneration of the constable, having regard to the nature and extent of police duties and responsibilities and the need to attract and retain an adequate number of recruits with the proper qualifications.

The secretaries of the commission will be Mr. T. A. Critchley (Home Office), secretary, and Mr. D. G. Mackay (Scottish Home Department), assistant secretary.

Society

The Solicitors' Articled Clerks' Society has announced the following programme of activities for January to March, 1960:—

26th January: *Debate* with the Chartered Accountants' Students Society at Oak Hall, Great Swan Alley, Moorgate, at 6 p.m.

2nd February: *Any Questions*. At The Law Society's Hall, at 6 p.m.

5th February: *Annual Dinner and Dance*. At The Law Society's Hall, at 6.30 p.m. for 7 p.m. Tickets from the dance secretary at 30s. single and £2 17s. 6d. double, or for the dance alone at 8s. 6d. single and 15s. double.

16th February: *Moot*. At The Law Society's Hall, at 6 p.m.

1st March: *Debate*. At The Law Society's Hall, at 6 p.m.

15th March: *Darts Tournament*. At a London "pub." Details of rules and entry will be supplied to those applying to the activities secretary.

16th March: *General Knowledge Quiz*. A team representing S.A.C.S. will be defending their title as holders of the Pearl Assurance General Knowledge Bee Cup, at the Pearl Assurance Sports Club, 252 High Holborn, W.C.2 (main dining hall at 6 p.m.).

29th March: *Theatre party*.

Entries are invited for a car rally to be held during the early part of May.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. Telephone: CHAncery 6855.

Annual Subscription: Inland £4 10s., Overseas £5 (payable yearly, half-yearly or quarterly in advance).

Classified Advertisements must be received by first post Wednesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).

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Classified Advertisements

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THE ADVERTISEMENT MANAGER, OYEZ HOUSE, BREAMS BUILDINGS, FETTER LANE, E.C.4. CHAncery 6855

PUBLIC NOTICES

BOROUGH OF WATFORD

APPOINTMENT OF LAW CLERK

Applications are invited for the established post of LAW CLERK. Applicants should be able to undertake normal conveyancing work.

Local Government experience an advantage, but not essential. Salary within the range £765 to £880, according to experience.

Forms of application may be obtained from the undersigned.

Closing date 30th January, 1960.

GORDON H. HALL,
Town Clerk.

Town Hall,
Watford,
January, 1960.

BOROUGH OF CREWE

ASSISTANT SOLICITOR

Applications are invited for the above appointment. Duties will include Conveyancing (including Compulsory Purchase on programme of central redevelopment) and Advocacy. Local Government experience is not essential and the salary grade (not exceeding Grade A.P.T. IV) and starting point within the Grade will be determined having regard to the experience of the successful candidate.

The Council will be prepared to give consideration to the provision of housing accommodation if required.

Applications stating age, qualifications and present salary, together with the names and addresses of two referees, should reach me not later than first post on Saturday, 23rd January, 1960.

A. BROOK,
Town Clerk.

Municipal Buildings, Crewe.
5th January, 1960

SOUTH-EAST DERBYSHIRE RURAL DISTRICT COUNCIL

APPOINTMENT OF SOLICITOR AND ASSISTANT CLERK

Applications are invited from suitably qualified persons for the above-mentioned appointment.

The salary will be within Lettered Grade C (£1,385–£1,620.)

Applicants must be solicitors, preferably with at least 5 years' local government experience. There are good prospects for the successful applicant.

The appointment will be subject to the provisions of the Local Government Superannuation Acts, and the passing of a medical examination.

Temporary housing accommodation will be provided, if required.

Applications, stating age, qualifications and experience and giving the names of three persons to whom reference may be made, should reach the undersigned not later than 1st February, 1960.

F. CLAYTON,
Clerk of the Council.

Council Offices,
St. Mary's Gate,
Derby.
11th January, 1960.

CORBY DEVELOPMENT CORPORATION

APPOINTMENT OF LEGAL OFFICER

Applications are invited from Solicitors for the appointment of Legal Officer to the Corporation, under the direction of the General Manager, at a salary within the range of £1,527–£1,755 according to qualifications and experience. Housing accommodation is available.

Candidates should preferably be experienced in Conveyancing, the law relating to Landlord and Tenant, planning law and practice and the law and procedure of building and engineering contracts. Local Government experience would also be an advantage, and the duties include some advocacy. The successful candidate will be required to pass a medical examination and contribute to a Superannuation Scheme.

Applications stating age, education, training, qualifications, experience, past and present appointments and salaries and names and addresses of two referees must be received by the undersigned not later than 1st February, 1960.

Envelopes and applications should be marked "Legal Officer."

R. F. BROOKS GRUNDY,
General Manager.

Spencer House,
Corby, Northants.

COUNTY OF ESSEX

Essex County Council require clerk with some experience of conveyancing work. Salary according to qualifications and experience of person appointed, but will not exceed £765 a year. Office hours at the rate of 38 a week; 5-day week; sick pay; superannuation; canteen; holiday, 15 working days, plus 3 days after 10 years' service. Canvassing forbidden. Applications in own handwriting stating age, education, qualifications, experience and names and addresses of three referees, should be sent as soon as possible to County Clerk, County Hall, Chelmsford.

CRAWLEY URBAN DISTRICT COUNCIL

APPOINTMENT OF ASSISTANT SOLICITOR

Applications are invited for the appointment of an Assistant Solicitor in the Clerk's Department at a salary in accordance with Grade A.P.T. IV (£1,065 to £1,220 per annum) plus temporary local weighting of £10 to £30 per annum according to age.

The appointment will be subject to the National Scheme of Conditions of Service for Local Authorities A.P.T., etc., Services, to the provisions of the Local Government Superannuation Acts and to the passing of a medical examination.

Applications, stating age, present position and salary and giving details of experience and the names of two referees, should be sent to the undersigned at Robinson House, Robinson Road, Crawley, Sussex, not later than Friday, 29th January, 1960.

The Council will assist in the provision of housing accommodation if required.

Canvassing directly or indirectly will disqualify and applicants must disclose in writing whether they are related to any member or senior officer of the Council.

R. W. J. TRIDGELL,
Clerk of the Council.

APPOINTMENTS VACANT

ASSISTANT SOLICITOR
APPOINTMENT

A Solicitor is required for an appointment in the Legal Department of a large industrial organisation in the Midlands.

The successful candidate will be required to participate generally in the work of the department and in particular to undertake conveyancing work, and to conduct some High Court litigation. Some advocacy will be involved.

High qualifications and ability will be looked for rather than length or type of experience.

Salary—within a wide range (minimum £925 p.a.) providing ample scope for advancement—will be by arrangement. The person appointed will be required to join a staff superannuation scheme.

Applications giving details of qualifications and experience to Box 6271, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4, by 23rd January, 1960.

WEST MIDLANDS.—Old-established (but up-to-date) firm requires ambitious Assistant Solicitor with a view to ultimate partnership. Very good prospects for man of industry, highest integrity and more than average ability.—Box 6234, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LINCOLN'S INN firm requires young and ambitious Solicitor for litigation and some conveyancing. Please state age, education, experience and salary required. Prospects of partnership and succession.—Box 6136, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR ASSISTANT

required in Chief Solicitor's Department, British Transport Commission, 21A John Street, London, W.C.1. Applicants (preferably under 35 years of age) should have considerable experience of all types of Conveyancing business. Salary range £814 to £1,450 a year; commencing salary according to age and experience.

Apply stating age, qualifications, present position and salary to Chief Solicitor, British Transport Commission, at above address.

JUNIOR litigation clerk required West End solicitors. Chiefly outdoor work. £11 per week.—Box 6170, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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★ Classified Advertisements ★

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APPOINTMENTS VACANT—*continued*

SOLICITORS (City) require experienced Trust and Probate clerk. 5-day week.—Please write Box 6272, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

PROBATE Trusts Clerk required by West End Solicitors. Knowledge of Company work an advantage. Experience and ability essential as progressive post. No Sats.—Box 5789, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CONVEYANCING Clerk required by West End Solicitors. Excellent prospects for advancement. 5-day week. Salary commensurate with experience.—Box 5788, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

COSTS clerk required by West End firm with expanding and busy general practice. Opportunity for experienced man to start new department.—Box 6203, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WATFORD, Herts. Solicitor required for Conveyancing, Probate and Common Law, and to assist Principal; salary according to ability and experience.—Box 6273, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CONVEYANCING Managing Clerk required by solicitors in North West Lancashire.—Please state experience, age and salary required to Box 6274, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

EXPERIENCED Probate and Conveyancing man (admitted or unadmitted) required by old established London, E.15, solicitors. Good salary to right man.—Box 6275, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WEST SUSSEX COAST. Assistant Solicitor required for busy old-established firm, primarily for Conveyancing and Litigation.—Box 6276, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

MANAGING Clerk required by Manchester Solicitors.—Apply Box 6277, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ASSISTANT Solicitor required by Manchester Solicitors.—Apply Box 6278, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

MANCHESTER.—Male Claims Correspondence Clerk, age 25 to 45 with some knowledge of Common Law with reference to Employers and Public Liability, required by Insurance Company. Salary £500 to £850 according to age and experience. Financial assistance in taking C.I.I. exams and annual bonus for each Part. Non-contributory Pension Scheme.—Box 6279, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CONVEYANCING Managing Clerk required in steadily expanding suburban practice. Must be able to deal with considerable volume of work. Please write stating experience and salary required.—Howard G. Thomas, 373 Norwood Road, S.E.27.

TRUST Accountant required by Holborn Chartered Accountants. Not over 45 years of age. Experience of Probate and Trust administration essential. Good salary; luncheon vouchers. Pension scheme in operation.—Box 6280, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

NANTWICH Solicitors seek applications from young solicitor (male or female) and from a conveyancing and probate clerk (male or female). Supervision available. A varied practice providing good opportunities for further experience. Housing prospects reasonable.—Apply Dixon, Bevan, Riggall and Durrad, Welsh Row, Nantwich.

BANBURY Solicitors require unadmitted Probate Clerk; permanent post with good prospects.—Box 6281, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

COMPETENT Conveyancing Managing Clerk, admitted or unadmitted, required for Wimbledon firm. Please state age and experience. Minimum salary £1,000 per annum.—Box 6135, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CONVEYANCING AND PROBATE Assistant (admitted or unadmitted) required. Please state experience and salary required.—CHARLES & CO., 54A Woodgrange Road, Forest Gate, London, E.7. MARyland 6167.

REIGATE–SURREY.—Old-established firm require immediately Managing Clerk for Conveyancing and Probate; please write stating age, qualifications, experience and salary required.—Box 6207, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

REIGATE, SURREY.—Old-established firm require immediately Assistant Solicitor for general work but principally Conveyancing and Probate; please write stating age, qualifications, experience and salary required.—Box 6208, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ASSISTANT Solicitor or Unadmitted Clerk capable of working under slight supervision only required by Conveyancing Department of Birmingham Solicitors. Commencing salary £1,250 per annum to £1,500 per annum depending on capability. Annual increases and pension scheme.—Box 6252, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WIGAN Solicitors require Assistant Solicitor. Busy general practice. Very good salary and prospects for the right man. Excellent opportunity for progressive advancement. Recent admission no bar.—Box 6253, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

MID-SUSSEX Solicitors require young Solicitor to assist with conveyancing and general country practice. One willing to undertake some advocacy preferred but not essential; excellent opportunity to gain experience, good salary and congenial working conditions.—Write stating full details and salary required, Box 6254, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ROMFORD (Essex) Solicitors require unadmitted Conveyancing Clerk capable of working without supervision; ability to undertake some probate work an advantage. Salary by arrangement.—Phone Romford 62227.

CONVEYANCING Manager required in Southern practice. Pension scheme with life cover, attractive salary with annual rises; help given with housing and general removal expenses.—Write with details of age and experience to Box 6255, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR, newly qualified, required by firm in Colchester, Essex, for litigation, divorce and advocacy; knowledge of conveyancing useful; write stating experience and salary required.—Box 6266, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR required by large City firm to work personally with partners on important matters for commercial and private clients. Good salary according to experience and qualifications. Prospects of advancement for the right man.—Write with full details of education, articles and experience to Box 6262, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ELTHAM.—Conveyancing Clerk required for large and progressive office on Kent border of London. Co-operative and helpful staff. Good commencing salary according to age and experience. Excellent prospects of advancement for applicant of character and integrity.—Box 6256, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

NORTHAMPTON Solicitors have an immediate vacancy for an Assistant Solicitor with general experience and some advocacy. Ability to work with little or no supervision preferred. Salary commensurate with experience and ability, with partnership prospects for the right man. State age, education, experience and present salary.—Box 6257, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CITY Solicitors require Trust and Probate Clerk with legal experience with view to succeeding managing clerk. Good salary and conditions.—Full particulars to Box 6258, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LUTON Solicitors have vacancy for male Assistant Conveyancing Clerk, required mainly for estate conveyancing. Good salary according to experience.—Apply Box 6260, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CONVEYANCING Clerk required by City solicitors. Salary £600–£700 plus L.V.'s. 5-day week, 9.30 to 5.30.—Box 6265, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITORS in Home Counties require young admitted Assistant. Salary according to experience.—Apply Box 6259, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CHELTENHAM. Assistant Solicitor (public school) wanted for old-established practice. Must be willing to undertake advocacy and used to acting without supervision. Commencing salary £1,000; prospects of partnership.—State age and experience to Box 6222, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITORS, Brighton, require an Assistant Solicitor for general family practice. A good opportunity for a keen young Solicitor. Write stating age, experience and salary required.—Box 6286, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

MANCHESTER Solicitors require young Assistant Solicitor for general work including some common law and advocacy. Some supervision if required. Good prospects for the right man and good salary paid according to age and ability.—Box 6287, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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Classified Advertisements

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APPOINTMENTS VACANT—*continued*

BRIGHTON Solicitors require Conveyancing and Probate Clerk, capable of working with minimum supervision. Permanent post; salary by arrangement. Write stating age, experience and salary required.—Box 6285, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ASSISTANT Solicitor required by well-established West End firm for Company and some Commercial work with view to early partnership. Write fully.—Box 6282, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

APPOINTMENTS WANTED

SOLICITOR (28), four years' experience since admittance seeks appointment leading to early partnership in East Kent.—Box 6284, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR, with facilities to undertake overflow work, invites interested solicitors to contact him with a view to entering into a mutually agreed arrangement.—Box 6264, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

MANAGING Clerk, wide experience most branches, seeks post Sussex/West Kent. Probate, Litigation, Divorce, Costs, Accident cases, etc., without supervision. Salary around £1,000. Pension.—Box 6283, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

PRACTICES AND PARTNERSHIPS

SUCCESSIONS in Dorset, Cornwall and London.—Apply Hooper & Son, 5 Chichester House, Chancery Lane, W.C.2.

WANTED—Partner (for general practice in Kingston Jamaica). Experienced. Money connections. Stable character. Sober habits. —Apply Solicitor, P.O. Box 172, Kingston, Jamaica, furnishing particulars under above heads.

PROPERTY INVESTMENTS

INVESTMENTS REQUIRED

ACTIVE enquiries in hand for good-class shop investments, blocks of flats, freehold ground rents and weekly investments of all types.—Details in confidence to Cowdrey, Phipps & Hollis, F.A.L.P.A., Investment Department, 360 Neasden Lane, London, N.W.10. (Dollis Hill 6671/3.)

SHORT Leasehold Investments required for Charity Fund with unexpired leases of of 10/20 years.—Lawson & Co., Chartered Surveyors, 40 Brook Street, W.1. Tel.: GRO 8446.

MORTGAGE FUNDS

As Financial Consultants we specialise in obtaining, on short or long terms, mortgages, re-mortgages and second mortgages from £500 up to £2,000,000

Enquiries welcomed without obligation

CITY & COMMERCIAL MORTGAGE COMPANY, LIMITED
Finance House, 136/137 Shoreditch High St.
London, E.1
Shoreditch 4908

WE offer a specialised service re mortgage advances on Shop Properties, Factories and Houses over £10,000. Sums also available for Building and Industrial development.—MILLER SMITH AND PARTNERS, Phoenix House, 19/23 Oxford Street, W.1. Tel.: Gerrard 1394.

BUILDING LAND WANTED

LAND WANTED for housing. Home Counties. 2/50 acres. Agents retained and reinstructed. Planning applications and appeals undertaken.—TRUE BOND HOMES, LTD., 342 Richmond Road, East Twickenham (POP 6231).

VALUATIONS FOR PROBATE

ANTIQUE AND MODERN FURNITURE, Silver, Porcelain, Pictures, Books and all descriptions of Chattel Property VALUED FOR PROBATE, INSURANCE OR FAMILY DIVISION, or, if desired, included in specialised auction sales. Sales also arranged by tender or private treaty.—Phillips, Son & Neale, 7 Blenheim Street, New Bond Street, W.1. Telephone No.: MAYfair 2424. Est. 1796.

REVERSIONS, LIFE POLICIES, ANNUITIES and UNQUOTED SHARES.—H. E. Foster and Cranfield, 6 Poultry, E.C.2, specialise in the valuation of these interests for probate purposes. Established 1843.

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A COMPANY for £25. Ready-made Companies for every business available immediately. Also Registration Service from ten guineas inclusive of books, seal, etc. HART & CO. (BUSH HOUSE) LTD., 138/9 Bush House, London, W.C.2. (TEMple Bar 1938.)

TO SOLICITORS, SURVEYORS, ETC.—Busy, experienced and successful mortgage and investment brokers would like to hear from those who could introduce funds for property conversions, 1st or 2nd mortgage at liberal interest, bridging operations, building finance, large financial transactions, short term transactions, etc., for advertisers' applicants.—Welsford, Morgan & Co., 986 London Road, Thornton Heath, Surrey. Tel.: THO 2135. (Established half a century.) Keep this advert.

PERSONAL

MODERN or Victorian Jewellery and Silver purchased. Call, post or appointment. Valuation for Probate. Sydney Epps, 18 Brook Street, (New Bond Street), London, W.1. MAYfair 1053.

GARRARD & CO. offer the most generous prices for any jewellery, gold or silver that you are prepared to dispose of. Consignments sent to 112 Regent Street, London, W.1, will be valued the day received, and an offer sent without obligation by return.

PRIVATE INQUIRIES

DIVORCE and general inquiries undertaken throughout London, Surrey, Middlesex by our own staff. Evictions and distress warrants executed. Certificated Bailiffs. Southern Provincial Investigations, 45 Brighton Road, Surbiton, Surrey (Elmbridge 1032/4). Also at 107A Hammersmith Road, London, W.14.

SERVING OF PROCESS, EVIDENCE OF MEANS, TRACING INDIVIDUALS, TAKING STATEMENTS, AND GENERAL ENQUIRY WORK—but not Divorces—carried out by RETIRED POLICE OFFICERS. Quick efficient service, Moderate fees. NUNEATON AND DISTRICT. Credit Trades Investigation Bureau Limited, Westminster Bank Chambers, Market Place, Nuneaton. Telephone Number: NUNEATON 4645.

BANNISTER Private Detective Bureau. Divorce, Criminal and Civil Investigations. —Guildford St., Shelton, Stoke-on-Trent. Dial Stoke-on-Trent 47780.

TYPING, ETC.

RUSHGROVE AGENCY can now undertake transcriptions from ORDINARY TAPE RECORDERS as well as STENORETTES and EMIDICTAS. Also COPYING, ENGROSSING, DUPLICATING, ABSTRACTING, etc. 561 Watford Way, London, N.W.7. MILl Hill 7242.

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NAMEPLATES

NAMEPLATES in bronze, brass and plastic; quotations and full size lay-out sent free; signwriting a speciality.—Please send wording to Abbey Craftsmen, Ltd., Abbey Works, 109A Old Street, London, E.C.1. Tel.: CLE 3845.

NAMEPLATES in bronze, brass or plastics; Rubber Stamps; sketches and estimates free.—Austin Luce & Company, 19 College Road, Harrow, Middlesex. Tel.: Harrow 3839.

HOTELS

LUXURY FAMILY HOLIDAY at SINAH WARREN country club by the sea. Unmatched comfort and amenities. Children welcome—experienced nannies supervise day and night. Excellent cuisine (room service available), a host of exciting sports, cabarets, nightly dinner dances. Illus. brochure from Dept. SJ.2, Sinah Warren, Hayling Island, Hants. Phone Hayling 77272.

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Classified Advertisements

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COSTS

THE Costs Department of The Solicitors' Law Stationery Society, Ltd., is available to the profession for the prompt preparation of all BILLS OF COSTS by expert draftsmen.—For full details apply The Manager, Costs Department, Oyez House, Breams Buildings, Fetter Lane, E.C.4. (CHAncery 6855.)

TRANSLATIONS

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